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No. 81-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Where a boycott of white merchants, organized by black persons to protest the continued denial of their civil rights, was accompanied by speeches, picketing, leaflet distribution and peaceful marches, as well as by what a state court found to be some incidents of unlawful conduct by some participants, was it constitutional to issue a permanent injunction against all participants banning all boycott activity, including protected speech and assembly?

2. Can a civil rights boycott constitutionally be enjoined in its entirety on the basis of the finding by a state court that some of the boycott participants engaged in "intimidation, threats, social ostracism, vilification, and traduction"?

3. Where a civil rights boycott caused business losses, and where the court found that a small percentage of the participants had engaged in unlawful acts during the boycott, could the court constitutionally impose joint and several liability for all the business losses upon all the boycott participants, including those whose only involvement in the boycott was to support its aims and voluntarily to withhold their patronage?

LIST OF PARTIES BELOW

In addition to these Petitioners, the following parties were Appellants in the Mississippi Supreme Court:

Mississippi Action for Progress, Inc.
Beatrice Atlas
Eli Brooks
Priscilla Brooks
Maggie Clark
Mack Louis Davis
Alex Dorsey
Ella Dorsey
Mary Durham
John Eggleston
John Ellis
Rachael Ellis
Ethel Graise
Charlie Harris
Albert Jackson
Mrs. E.J. Jennings
Lela Jones
Bobby Kelly
Clarence Lucas
Bessie Newman
D.A. Newman
Roosevelt Owens
Henry Otis Preston
Viola Robinson
Dora Shorter
Roman Shorter
Rosa Shorter
Annie B. Smith
Delores Smith
Leon Tarleton
Lessie Mae Walls
Alonzo Warner
Ethel Warner

Bonnie Wells
Gussie Pearl Wilson
Willie Wilson
Early Wren
Ruby Wren

The following parties were Appellees in the Mississippi Supreme Court:

Claiborne Hardware Company, Inc.

Q.H. McDaniel, Jr., d/b/a McDaniel Pharmacy

James E. Hudson and George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store

Waddy Abraham, d/b/a Jitney Jungle

Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store

Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store

Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria

Port Gibson Lumber & Supply Company, Inc.

W.H. Hay, d/b/a O.K. Cleaners & Shirt Laundry

Charles R. Dobbs, d/b/a Western Auto Associates Store

Allen Motor Co., Inc.

Mrs. Edgar A. McCaa, d/b/a Town & Country

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v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

PETITION FOR WRIT OF CERTIORARI

Petitioners, the National Association for the Advancement of Colored People ("NAACP")[1] and 91 individual black residents of the State of Mississippi,[2] respectfully

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[1] The NAACP has more than 2,000 adult and youth branches throughout the country, and is affiliated with the NAACP Special Contribution Fund, the NAACP National Housing Corporation, and Crisis Publishing Company.

[2] The individual Petitioners are Ferd Allen; Henry Anderson; Alonzo Atlas; Calvin Bailey; James Bailey; McLawrence Bailey; Joseph M. Barber; Kenneth C. Barber; Bill Beasley; Helen Beasley; Calvin Blackburn; Marjorie W. Brandon; Janie Brown; Tullos Brown; Eddie Burrell; James Burrell; Robert Butler, Jr.; Arthur Lee Camphor; Irma Rae Camphor; W. E. Camphor; Al-

pray that a Writ of Certiorari issue to review the Judgment and Opinion of the Supreme Court of Mississippi entered on December 10, 1980.

OPINIONS BELOW

The opinion of the Supreme Court of Mississippi in this case, *NAACP v. Claiborne Hardware Co.*, 393 So. 2d 1290 (Miss. 1980), is reproduced in Appendix A. The unreported opinion of the Chancery Court of the First Judicial District of Hinds County is reproduced in Appendix B.

JURISDICTION

The judgment of the Mississippi Supreme Court was entered on December 10, 1980. App. C. That court extended the time for filing of petitions for rehearing until January 24, 1981. App. D. Petitions for rehearing were denied on March 4, 1981. App. E. By order of

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berta Coleman; Charles Collier; James Collier; Alexander Collins; Geneva Collins; Thelma Crowder; Dan Currie; Sarah Jane Currie; Charles Davis; Mary Ella Dee; James DeVoual; Geneva Durham; Johnny Durham; Harvey Ellis; Jim Ellis, Jr.; Katie Ellis; Charles Evers; James Gray; Walter L. Griffin, Sr.; Bernard Gusta; Leesco Guster; Cline Harvey; Jim Holt; Willie Jackson; Jesse Johnson; Roscoe Johnson; Julia Coleman Jones; Marcus Jones; Nathaniel H. Jones; Samuel Jones, Jr.; Bernice Lee; Edward Lee; Margaret Liggan; Julia Lucas; Nathaniel Martin; Leander Monroe; Johnny Moore; Mary Lee Moore; Willie V. Moore; Ellis Neal; Amos Newsome, Jr.; James Odom; Leona Owens; William Owens; Henry Patton, Jr.; Evan Roberson; William Robinson; Mary Ross; Odessa Ross; William Matt Ross; Elmo Scott; Rudolph Shields; Oliver Shinall; Bilbo Smith; Ira Thomas; Carl Thompson, Jr.; Marguerite Thompson; Mack Tisdale; George Henry Walker; Thelma K. Walker; Eddie Walls, Jr.; Alex Warner; Albert Weathers; Carl Lee Wells; Eddie Lee Wells; Katie Wells; Bome Wells; James Whitney; Calvin Williams; Ernestine Williams; Aaron Wilson; and Arthur Wyatt.

The twelve Respondents here, who were the Appellees in the court below, are identified at page iii of this Petition.

Justice Powell, dated May 23, 1981, the time for filing a petition for writ of certiorari was extended to and including August 1, 1981. App. F. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

The Fourteenth Amendment to the United States Constitution provides:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

This action was brought by a group of white merchants in Claiborne County, Mississippi, including Respondents here, against these Petitioners and other black citizens of Claiborne County, seeking damages and injunctive relief in connection with a boycott. The boycott was organized in 1966 to dramatize the protest of black people against the continued denial of their civil rights by the local government and businesses in their community.

The boycott in question grew out of discussions about civil rights issues in late 1965 and early 1966 between

a group of black citizens and a group of white public officials and business leaders, including a number of these Respondents. In March 1966, black leaders prepared a list of specific grievances, including demands for the desegregation of county schools, the county courthouse and hospital, and all other public facilities; the employment of blacks on the local police force; the desegregation of bus stations and other public accommodations; the extension of courtesy titles to blacks as well as whites; the construction of streets, lighting, and sewage facilities in black residential areas of the county; the appointment of blacks to positions on the Board of Education, on juries, and as election officials; and the employment of black clerks and cashiers in stores patronized by blacks.[3]

These grievances were delivered to the political and business leaders of Claiborne County, but they were largely ignored or unsatisfied. App. B at 15b. On April 1, 1966, at a meeting held at the First Baptist Church in Port Gibson, Mississippi, several hundred black citizens decided by voice vote to support a general boycott of certain white-owned businesses in Claiborne County in order to dramatize their unmet demands.

Particularly at the outset, and intermittently thereafter, the boycott was accompanied and publicized by speeches, marches, picketing, and leaflet distribution aimed at persuading blacks not to patronize the merchants' stores. Many of the picketers were young children. App. A at 13a. (R. 1147, 2140.) The picketing and marching activities, which were closely monitored, photographed, and tape recorded by both city and county law enforcement officials, were orderly at all times. (R. 1127-28.) The frequency and intensity of boycott-related picketing, marching, leafletting, and speaking varied over time.

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[3] The complete list of grievances is set forth in the Mississippi Supreme Court's opinion. App. A at 10a-12a.

Protest activity was especially intense after the assassination of Dr. Martin Luther King, Jr., in April 1968, and again after a young black man was shot and killed at his home by a white policeman in Port Gibson in April 1969.

In October 1969, the merchants filed this action in the chancery court for Hinds County, Mississippi, seeking injunctive relief against further boycott activities and $3.5 million for business losses allegedly caused by the boycott. On December 24, 1969, defendants filed a special demurrer, asserting that the demands of the bill of complaint were not maintainable under the First and Fourteenth Amendments. The chancellor overruled this demurrer on February 27, 1970. Defendants also sought on First and Fourteenth Amendment grounds—and for a time secured—a federal court injunction against the maintenance of this action. This preliminary injunction was vacated by the United States Court of Appeals for the Fifth Circuit in 1971 for lack of subject-matter jurisdiction.[4] The case went to trial in chancery court in 1973. Defendants moved to dismiss on the ground that enjoining and assigning liability to their conduct would violate the First and Fourteenth Amendments. On February 25, 1974, that motion was denied.

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[4] *Henry v. First Nat'l Bank (Henry I)*, 50 F.R.D. 251 (N.D. Miss. 1970), *rev'd*, 444 F.2d 1300 (5th Cir. 1971), *cert. denied*, 405 U.S. 1019 (1972). *Henry I* involved a claim brought pursuant to 42 U.S.C. § 1983 on behalf of the defendants in this case. The federal preliminary injunction against prosecution of this case was issued on the theory that the merchants "seek to infringe upon [Petitioners'] First Amendment rights," and that "the prosecution of the State Action will have a chilling effect upon the exercise of those rights." 50 F.R.D. at 268. On appeal, the Fifth Circuit held that the mere commencement of the private state tort suit had not itself involved "state action" for purposes of 28 U.S.C. § 1343(3), the jurisdictional counterpart to 42 U.S.C. § 1983. The court's rationale presumed that the state court defendants would receive full and fair consideration of their First Amendment defenses in chancery court. *See* 444 F.2d at 1310.

More than two years after the close of the evidence, the chancellor issued his opinion and final decree. Apps. B, G. The court awarded the merchants approximately $1.25 million in damages, statutory penalties, and attorneys' fees, and declared 130 defendants (including these Petitioners) jointly and severally liable for those damages. The principal ground of liability as found by the trial court was violation of Mississippi's "anti-boycott statute," Miss. Code Ann. § 97-23-85, which was enacted after and in response to the civil rights boycott activity then prevalent in the state. Other grounds were restraint of trade (under state law) and the common law of civil conspiracy. The final decree also enjoined the defendants and all persons confederating with them from, *inter alia*, "[p]ersuading, soliciting, advising, threatening, coercing, intimidating and restraining any person" to withhold patronage from plaintiffs. The decree also banned all future "[p]icketing or patroling" of plaintiffs' stores. App. G at 19g.

The 130 defendants appealed to the Mississippi Supreme Court.[5] Appellants assigned as error the chan-

[5] The defendants moved in the Mississippi Supreme Court for relief from the requirement that they post a surety bond of 125 percent of the amount of the lower court judgment in order to obtain a writ of supersedeas. *See* Miss. Code Ann. § 11-51-31. That motion was denied.

Defendants thereafter sought preliminary injunctive relief from the bonding requirement in federal district court. The federal court granted preliminary relief, finding that Petitioners were likely ultimately to prevail on the merits of their First Amendment defenses to the state court suit. The Fifth Circuit, affirming, observed that the district court's order "delays enforcement of the state Chancery Court's judgment until the Mississippi Supreme Court and, if necessary, the United States Supreme Court have had an opportunity to review the important constitutional issues presented in this case." *Henry v. First Nat'l Bank (Henry II)*, 424 F. Supp. 633 (N.D. Miss. 1976), *aff'd*, 595 F.2d 291, 301 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980).

cellor's failure to accord First Amendment protection to the Claiborne County boycott, and raised a number of state law defenses to the judgment. On December 10, 1980, the Mississippi Supreme Court rendered its opinion and judgment. The court found Mississippi's anti-boycott statute and trade restraint statutes inapplicable and grounded its decision only on the common law of civil conspiracy. It affirmed the chancellor's decision to assign to virtually all the appellants full responsibility for all the merchants' business losses. That decision was premised exclusively upon the "presen[ce]" in Claiborne County of "force, violence, or threats," App. A at 23a, which the court found to be the product of a general conspiracy among all the boycott participants. Quoting extensively from the chancellor's opinion, the court held:

> "'In carrying out the agreement and design, certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers. Intimidation, threats, social ostracism, vilification, and traduction were some of the devices used by the defendants to achieve the desired results. Most effective, also, was the stationing of guards ("enforcers," "deacons," or "black hats") in the vicinity of white-owned businesses. *Unquestionably, the evidence shows that the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants.*'" App. A at 20a, *quoting* App. B at 39b (emphasis supplied by Mississippi Supreme Court).

The Mississippi Supreme Court rejected the appellants' claim of First Amendment protection for their boycott activities, noting:

> "The agreed use of illegal force, violence, and threats against the peace to achieve a goal makes the present state of facts a conspiracy. We know of no instance,

> and our attention has been drawn to no decision, wherein it has been adjudicated that free speech guaranteed by the First Amendment includes in its protection the right to commit crime." App. A at 23a.

The court identified a few acts of hooliganism that occurred in Claiborne County during the boycott but did not connect them with the boycott campaign or its organizers. *See* App. A at 15a-18a. The court did not specify who committed the "crime" referred to in the above quotation. Nor did it explain what types of "intimidation, threats, social ostracism, vilification, and traduction," if any, constitute "crime." [6]

The court reversed and rendered judgment in favor of 38 of the appellants.[7] As to the remaining 92 appellants who are Petitioners here, however, the Court upheld the chancellor's injunction prohibiting all further boycott activity.[8] The Court also held that the 92 appellants would be liable for all business losses that the merchants could prove were caused by the boycott. All

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[6] The dictionary definition of "traduction" is defamation. *See* Webster's New Collegiate Dictionary 1238 (1977) ("expos[ing] to shame or blame by means of falsehood and misrepresentation").

[7] Of the 38, 37 were individuals that could not be held liable even under the court's generalized conspiracy theory. Either there was no evidence about them at all, or the evidence failed to show that they were active in the boycott in any way. Also dismissed was Mississippi Action for Progress, Inc., a federally-funded, nonprofit Mississippi corporation administering the Headstart Program in Claiborne County.

[8] In upholding the injunction, the court asserted that appellants viewed this issue as "moot," App. A at 5a, even though they had specifically assigned it as error. Appellants sought reconsideration of this disposition of the injunction question in their petition for rehearing. Appellants' position was not that the outstanding injunction was moot for purposes of appellate review, but that chancery jurisdiction *on remand* would be inappropriate in view of the absence of equity jurisdiction where the activities sought to be enjoined were not continuing. App. H. Appellants' rehearing petition was denied without opinion. App. E.

decisions not to patronize were thus charged to these 92 appellants. The Court did find errors of state law in the merchants' proof of damages, and it remanded for a retrial on that question, concluding:

> "We are satisfied that complainants suffered some damages resulting from the boycott but are of the opinion that the amount allowed was excessive under the evidence presented." App. A at 35a.

Petitions for rehearing were denied on March 4, 1981. App. E.

Jurisdiction and Reviewability

The decision below is a "[f]inal judgmen[t] or decre[e]" within the meaning of 28 U.S.C. § 1257. It involves the second category of final judgment identified by this Court in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480 (1975), *i.e.*, one

> "in which the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings."

Here, no federal questions remain for decision by the state trial court on remand. The Mississippi Supreme Court's decision does not leave room for litigating in state court any of the important First Amendment questions presented by this Petition. Subsequent proceedings apparently will be directed solely to the question of how much money each complaining merchant lost because of the boycott. The constitutional questions presented by the judgment below "will survive and require decision" whatever may be decided on remand. Such judgments are final for purposes of Section 1257. *See, e.g., New York v. Cathedral Academy*, 434 U.S. 125, 128 n.4 (1977); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945).

The special procedural posture of this case strongly counsels in favor of deciding these important, and readily

identifiable,[9] First Amendment questions now. The permanent injunction against all future protest activities directed at the merchants' businesses is now final. While the injunction may be reviewable in this Court someday, the prior restraint it imposes upon Petitioners' rights of free speech is in effect now and, but for the Fifth Circuit's stay,[10] would completely bar the exercise of these rights in the interlocutory period and during retrial. *See National Socialist Party of America v. Village of Skokie*, 432 U.S. 43, 44 (1977); *Nebraska Press Assn. v. Stuart*, 423 U.S. 1327, 1329-30 (1975) (Blackmun, J., in chambers).[11] The chilling effect of this highly publicized case upon Petitioners and upon NAACP chapters nationwide is a factor that cannot be overemphasized.

Considerations of judicial economy and federalism would be well-served by review at this point in the litigation. As this Court noted in *Cox*, one of the touchstones of the finality requirement is the recognition that immediate review may avoid "the mischief of economic waste." 420 U.S. at 477-78. Trial of the damage issues in this case would be protracted and complex. The Mississippi Supreme Court directed that in estimating lost sales attributable to the boycott each merchant must exclude the effects of such factors as population changes, managerial skills, advertising effects, the 1970 recession, and the need for and availability of increased inventory. App. A at 30a-31a. The Court further directed that each merchant's conversion of lost sales to lost earnings be recalculated to consider changes in the pricing policies of his business, remanded the awards for loss of good

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[9] *Cf. Flynt v. Ohio*, 101 S. Ct. 1958, 1960 (1981).

[10] In *Henry II* the Fifth Circuit enjoined enforcement of the chancery court decree pending review by the Mississippi Supreme Court and by this Court. *See* note 5 *supra*.

[11] *Accord*, Note, *The Finality Rule for Supreme Court Review of State Court Orders*, 91 Harv. L. Rev. 1004, 1031-32 (1978).

will for the introduction of further evidence, and established additional guidelines on remand. *Id.* at 30a, 31a-35a. A trial on these issues could consume months (the first trial lasted six months) and cost hundreds of thousands of dollars. It would be an "economic waste," given the possibility of subsequent reversal by this Court. Review in this Court now is consistent with the pragmatic nature of the finality requirement.[12]

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW PRESENTS AN IMPORTANT FIRST AMENDMENT QUESTION CONCERNING THE CONSTITUTIONAL LEGITIMACY OF POLITICAL BOYCOTTS THAT WILL HAVE SIGNIFICANT IMPACT ON FUTURE POLITICAL PROTEST ACTIVITY.

The Claiborne County boycott campaign was in the mainstream of the civil rights movement. Since Reconstruction, black citizens of Claiborne County had been foreclosed from participation in elections, forced to attend segregated schools, and denied employment either in public jobs funded by their tax dollars or in private jobs working for the merchants who depended on their trade. The boycott was also in the mainstream of American political history. Citizens were urged by means of speeches, marches, leaflets, and picketing to participate in the boycott. Those communications, designed to alter prevailing governmental policies, were quintessentially protected speech.[13] It has always been beyond question that the First Amendment permits the advocacy of boycott messages to protest government

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[12] *See, e.g., Cox, supra,* 420 U.S. at 486; *Mathews v. Eldridge,* 424 U.S. 319, 331 n.11 (1976).

[13] *See, e.g., Carey v. Brown,* 447 U.S. 455, 466-67 (1980); *First Nat'l Bank v. Bellotti,* 435 U.S. 765, 776-77, 790 (1978); *Mills v. Alabama,* 384 U.S. 214, 218 (1966).

policies. That amendment guarantees American citizens "the opportunity to persuade to action, not merely to describe facts." [14]

Boycott campaigns have played an important role in the history of political protest in this country ever since American colonists refused to buy English-made goods in order to force repeal of the Stamp and Townshend Acts.[15] Abolitionists refused to buy slave-made goods before the Civil War.[16] Consumers' Leagues organized by the Progressives around the turn of the century issued reports and "white lists" to urge boycotts of what they viewed as "sweat-shop" industries.[17] Blacks in Montgomery, Alabama, launched the desegregation movement in this country through their boycott of that city's bus system.[18] Only recently, church groups have organized a boycott campaign to protest the sponsorship of television programming featuring prominent displays of sex or violence.[19] The Eighth Circuit recently afforded First Amendment protection to a boycott protesting the failure of several states to ratify the proposed Equal Rights

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[14] *Thomas v. Collins*, 323 U.S. 516, 537 (1945). *See also Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *NAACP v. Button*, 371 U.S. 415, 429 (1963); *Thornhill v. Alabama*, 310 U.S. 88, 104-05 (1940).

[15] S. Morison, The Oxford History of the American People 197-98 (1965); H. Commager, Documents of American History 67-68, 76-78, 80 (7th ed. 1963) (non-importation resolutions). The Sons and Daughters of Liberty played an active role in these boycotts, distributing circulars urging citizens not to trade with Tory merchants. One typical poster read:

> "It is desired that the Sons of Liberty would not buy any one thing of them . . ., for in so doing they will bring disgrace upon themselves and their posterity forever and ever. Amen."

H. Laidler, Boycotts and the Labor Struggle 29 (1913).

[16] H. Laidler, *supra*, at 55.

[17] *Id.* at 33-35.

[18] *See* Note, *The Common-Law and Constitutional Status of Anti-discrimination Boycotts*, 66 Yale L.J. 397 (1957).

[19] *See* N.Y. Times, June 22, 1981, at A12, col. 1.

Amendment.[20] This Court will hear this Term threshold Norris-LaGuardia issues involving a refusal to handle Soviet cargoes in response to the Russian intervention in Afghanistan.[21]

The Court has never before found occasion to consider the important question of how the First Amendment applies in the context of political boycott activity.[22] The lower federal courts have recognized that political boycott activity holds protected constitutional status. In its recent opinion in a proceeding related to this very case, the Fifth Circuit observed:

> "At the heart of the Chancery Court's opinion lies the belief that the mere organization of the boycott and every activity undertaken in support thereof could be subject to judicial prohibition under state law. This view accords insufficient weight to the First Amendment's protection of political speech and association. There is no suggestion that the NAACP . . . or the individual defendants were in competition with the white businesses or that the boycott arose from parochial economic interests. On the contrary, the boycott grew out of a racial dispute with the white merchants and city government of Port Gibson and all of the picketing, speeches, and other communication associated with the boycott

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[20] *Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980).

[21] *New Orleans S.S. Ass'n v. General Longshore Workers*, 626 F.2d 455 (5th Cir. 1980), *cert. granted sub nom. Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 49 U.S.L.W. 3722 (U.S. March 30, 1981) (No. 80-1045).

[22] Other political boycott cases have not squarely presented the question raised in this case. *See Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980); *Rouse Philadelphia, Inc. v. Ad Hoc '78*, 417 A.2d 1248 (Pa. Super. Ct. 1979), *cert. denied*, 449 U.S. 1004 (1980); *NAACP v. Overstreet*, 221 Ga. 16, 142 S.E.2d 816 (1965), *cert. dismissed as improvidently granted*, 384 U.S. 118 (1966) (*per curiam*) (5-4).

> were directed to the elimination of racial discrimination in the town. This differentiates this case from a boycott organized for economic ends, for speech to protest racial discrimination is essential political speech lying at the core of the First Amendment." [23]

And in *Machesky v. Bizzell*, 414 F.2d 283, 287, 288-89 (5th Cir. 1969), involving a virtually identical civil rights boycott, the Fifth Circuit affirmed the grant of a federal injunction against a sweeping Mississippi chancery decree in order "to vindicate clear First Amendment rights" involved in that boycott—"political rights which determine the composition of government and the direction of government policy." [24]

The Mississippi Supreme Court in this case has refused to accord any protection for these political rights. It has held that these Petitioners will be liable for all business losses caused by everyone's refusal to patronize plaintiffs' stores—regardless of whether an individual's decision to withhold trade was a matter of lawful persuasion or unlawful coercion.[25] And it has enjoined all protest

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[23] *Henry v. First Nat'l Bank (Henry II)*, 595 F.2d 291, 303 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980).

[24] Similarly, in *Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980), the Eighth Circuit refused to apply either the Sherman Act or Missouri tort law to a boycott organized by NOW to protest the state's failure to ratify the proposed Equal Rights Amendment. The Eighth Circuit relied in part upon this Court's decisions holding that group activity directed at influencing governmental policies implicates the First Amendment's guarantee of the right to petition for redress of grievances. *See Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *UMW v. Pennington*, 381 U.S. 657 (1965).

[25] Like the overbroad injunction, this failure to apportion damage liability was constitutional error. *See UMW v. Pennington*, 381 U.S. 657, 671-72 (1965); *UMW v. Gibbs*, 383 U.S. 715, 729-35 (1966); *cf. Teamsters Local 20 v. Morton*, 377 U.S. 252, 259-62 (1964) (damage award under state law for unlawful union activity cannot include losses caused by simultaneous union activity protected by federal labor law).

activities directed at those stores, including peaceful speeches, marches, leaflet distribution, and peaceful picketing. This was constitutional error. The First Amendment requires "[p]recision of regulation," not "[b]road prophylactic rules." *NAACP v. Button*, 371 U.S. 415, 438 (1963). That doctrine has uniformly been applied by this Court to state statutes,[26] municipal ordinances,[27] and judicial injunctions.[28] As the Court has recently held, "Where a government restricts the speech of a private person, the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest." *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980). The state court's decision in this case is not precisely drawn, nor has it been shown to serve any state interest. It is not an aberration this Court can safely let pass. It is a serious threat to American political freedom.

II. THE DECISION BELOW MISCONSTRUES THE NARROW EXCEPTION TO TRADITIONAL FIRST AMENDMENT PRINCIPLES APPLIED BY THIS COURT IN *MILK WAGON DRIVERS LOCAL 753 V. MEADOWMOOR DAIRIES*, AND IS IN DIRECT CONFLICT WITH THE DECISION OF THE FIFTH CIRCUIT IN THIS VERY CASE.

The court below purported to find justification for its decision in *Milk Wagon Drivers Local 753 v. Meadow-*

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[26] *See, e.g., First Nat'l Bank v. Bellotti*, 435 U.S. 765, 786 (1978); *Wooley v. Maynard*, 430 U.S. 705, 716-17 (1977); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296-97 (1961); *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Cantwell v. Connecticut*, 310 U.S. 296, 307-08 (1940); *Thornhill v. Alabama*, 310 U.S. 88, 98-101 (1940).

[27] *See, e.g., Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213-14, 217-18 (1975); *Schneider v. State*, 308 U.S. 147 (1939).

[28] *See, e.g., Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 563-65 (1976); *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 183-84 (1968); *Teamsters Local 795 v. Newell*, 356 U.S. 341 (1958), *rev'g per curiam* 181 Kan. 898, 317 P.2d. 817 (1957).

moor Dairies, Inc., 312 U.S. 287 (1941). App. A at 20a-21a. This reliance could not have been more misplaced. *Meadowmoor* was designed as an extremely narrow exception to the principle that any regulation of speech must be precisely drawn. The Mississippi Supreme Court's unprecedented and unwarranted extension of *Meadowmoor* to the facts of the instant case presents an important question concerning First Amendment rights that should be settled by this Court.

In *Meadowmoor*, this Court upheld an injunction that barred all labor picketing. The circumstances of that case amounted literally to a labor war, in which violence was "neither episodic nor isolated." The Court catalogued these circumstances with great care:

> "Witnesses testified to more than fifty instances of window-smashing; explosive bombs caused substantial injury to the plants of Meadowmoor and another dairy using the vendor system and to five stores; stench bombs were dropped in five stores; three trucks of vendors were wrecked, seriously injuring one driver, and another was driven into a river; a store was set on fire and in large measure ruined; two trucks of vendors were burned; a storekeeper and a truck driver were severely beaten; workers at a dairy which, like Meadowmoor, used the vendor system were held with guns and severely beaten about the head while being told 'to join the union'; carloads of men followed vendors' trucks, threatened the drivers, and in one instance shot at the truck and driver. In more than a dozen of these occurrences, involving window-smashing, bombings, burnings, the wrecking of trucks, shootings, and beatings, there was testimony to identify the wrongdoers as union men.[1] "

"[1] It would needlessly encumber the reports to quote in detail the evidence thus summarized. The curious may turn to the record in the case."

312 U.S. at 291-92 & n.1. Peaceful labor picketing was enjoined along with violent conduct in *Meadowmoor*, but this Court cautioned that the "[r]ight to free speech in the future cannot be forfeited because of dissociated acts of past violence." *Id.* at 296.

There is serious constitutional question whether *Meadowmoor*, a picketing case decided in the context of pervasively violent labor union activity, is even applicable to political boycotts. The First Amendment's guarantees are broader for purposes of political activity than for purposes of labor union activity. *See Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). The Court has explicitly distinguished labor picketing from public protests concerning the desegregation of local schools, observing that the latter "res[t] on the highest rung of the hierarchy of First Amendment values."[29] Here, too, Petitioners' communicative activity has been directed at civil and political reforms, not labor or economic issues. The *Meadowmoor* exception has been—and should continue to be—narrowly confined to the explosive potential of industrial strife.

In any event, the record of this case simply does not support the Mississippi Supreme Court's invocation of the *Meadowmoor* exception. Dissociated acts of past violence do not justify a sweeping injunction against all future speech; the *Meadowmoor* Court itself cautioned that "a trivial rough incident or a moment of animal

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[29] *Carey v. Brown*, 447 U.S. 455, 466-67 (1980), *citing* A. Meiklejohn, Free Speech and Its Relation to Self-Government (1948).

On the same day *Carey* was decided, two of six Justices who reached the question resolved the "difficult First Amendment issues" concerning the federal ban on peaceful secondary picketing by labor unions only by reference to the substantial governmental interest in limiting the confines of "industrial strife" and the specially "persuasive deterrent" of conduct on the labor picket line. *NLRB v. Retail Store Employees Local 1001 (Safeco)*, 447 U.S. 607, 616-18 (1980) (Blackmun, J., concurring in the result); *id.* at 618-19 (Stevens, J., concurring in the result).

exuberance" does not abrogate First Amendment rights. 312 U.S. at 293. The Court has distinguished the facts of *Meadowmoor*, not only from a companion case decided the same day, *AFL v. Swing*, 312 U.S. 321, 325 (1941), but also from every other similar case that has been decided since.[30]

Meadowmoor cannot be applied, as a matter of law and fact, unless there has been a finding that an injunction limited to violent conduct would be ineffective if picketing were resumed.[31] The Mississippi Supreme Court made no such finding, and apparently considered it unnecessary: "If any of these factors—force, violence, or threats—is *present*, then the boycott is illegal regardless of whether it is . . . political, social or other." App. A at 23a (emphasis supplied). This "presence of violence" test is inconsistent with the plain language of *Meadowmoor*.

The court below did make the conclusory statement that an "atmosphere of fear . . . prevailed among blacks from 1966 until 1970."[32] But fear of "social ostracism, vilification, and traduction," App. A at 20a, does not raise a justiciable issue in a First Amendment case.[33] Much conduct covered by these broad categories is not even actionable, and even actionable "traduction" or

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[30] *See Cafeteria Employees Local 302 v. Angelos*, 320 U.S. 293, 296 (1943); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 139 (1957); *Teamsters Local 795 v. Newell*, 356 U.S. 341 (1958), *rev'g per curiam* 181 Kan. 898, 912-16, 317 P.2d 817, 829-31 (1957); *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 180-81 (1968). *See also Collin v. Chicago Park Dist.*, 460 F.2d 746, 755 (7th Cir. 1972).

[31] *See Youngdahl, supra*, 355 U.S. at 139. *See also Angelos, supra*, 320 U.S. at 296.

[32] App. A at 16a, *quoting* App. B at 35b.

[33] *See, e.g., Letter Carriers Branch 496 v. Austin*, 418 U.S. 264, 280-87 (1974); *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *Terminiello v. Chicago*, 337 U.S. 1, 4-5 (1949).

defamation does not justify a prior restraint on its repetition.[34] In any case, it was not fear—or even the fear of "traduction"—that made this civil rights boycott effective. As the merchants themselves conceded in the court below,[35] witness after witness testified that in 1966 black persons in Claiborne County were sufficiently impatient with the continued denial of their civil rights that they voluntarily refused to have any further economic dealings with the plaintiffs in this case. (R. 5731-32, 5855-56, 6066-67, 6227, 6641, 6737, 6848, 6864, 12419, 13543-44.) As one of the employees of the county Headstart Program testified:

> "I just stayed out of the stores, because I had my own personal reasons to stay out of the stores. There were some things I really wanted, and the things I wanted were the right to vote, the right to have a title—Mrs. or Mr. or whatever I am, and not uncle or aunt, boy or girl. So that's what I wanted. And if I wanted a job—a qualified job, I wanted to have the opportunity to be hired. Not hired because I'm black or white, but just hired." (R. 15476.)

Understandably, the Fifth Circuit has refused to apply *Meadowmoor* to the facts of this very case, concluding that the chancellor's sweeping injunction

> "overshoots the mark and the situation cannot be saved by *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 1941, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, a case premised on violence of an intensity and duration in no way present here, or at least on the record before the district court."[36]

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[34] *See, e.g., Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931).

[35] *See* Brief for Appellees Claiborne Hardware Co., et al. at 12: "Most of the witnesses testified that they voluntarily went along with the NAACP and their fellow black citizens in honoring and observing the boycott because they wanted the boycott."

[36] 595 F.2d at 304, *quoting Machesky v. Bizzell*, 414 F.2d 283, 290-91 (5th Cir. 1969). Nor was there any insufficiency in the rec-

In First Amendment cases on review from state courts, this Court "of course make[s] an examination of the evidence to ascertain independently whether the right has been violated." [37] Review is essential here to ensure that the extraordinary sanction permitted by *Meadowmoor* is not misapplied. Review is also needed to resolve a direct conflict between the Mississippi Supreme Court and the Fifth Circuit as to the contours of this unusual exception both to the rule of presumptive unconstitutionality of prior restraints and to the prohibition against overbreadth in otherwise lawful limitations on First Amendment activity.

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ord before the district court. The case was presented only after the conclusion of the state court trial, and the merchants (Respondents here) had ample opportunity to make whatever record they wished to make in federal court.

[37] *Feiner v. New York*, 340 U.S. 315, 316 (1951). *See also id.* at 322 n.4 (Black, J., dissenting); *In re Primus*, 436 U.S. 412, 434 (1978); *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *Pennekamp v. Florida*, 328 U.S. 331, 335 (1946). *See also Time, Inc. v. Firestone*, 424 U.S. 448, 463 (1976) (deference to state findings in First Amendment case "predicated on our belief that at some point in the state proceedings some factfinder has made a conscious determination of the existence or nonexistence of the critical fact").

Petitioners cannot provide a comprehensive analysis of the record below within the space limits of this Petition. We note, however, that most of the incidents cited by the chancellor (and quoted by the court below) are either unrelated to the boycott or so minor as to lack constitutional significance. The slashing of the tires on Jasper Coleman's car, for example, was done by a person or persons unknown while the car was parked in front of someone else's house during an all-night poker game. R. 13792. Willie Myles reported that "a carload of young blacks began following him," but the court does not indicate why, and the "young blacks" are not identified with the boycott except that they were blacks, in Port Gibson, at the time the boycott took place. App. A at 18a. The "threatening" nature of other incidents is belied by the fact that the "victims" continued to do business with the plaintiffs. Comprehensive review of the record by this Court will show the lower court's description of "boycott" events to be little more than excerpts from the Claiborne County police blotter from 1966 to 1970.

III. THE DECISION BELOW VIOLATES THE FIRST AMENDMENT'S GUARANTEE OF FREEDOM OF ASSOCIATION IN A WAY THAT POSES SERIOUS RESTRICTIONS UPON GROUP PROTEST ACTIVITY.

The Mississippi Supreme Court applied the common law of civil conspiracy in this case to hold *each* of these Petitioners jointly and severally liable for all the business losses the merchants can prove were caused by the boycott. This essentially unbounded application of conspiracy theory violates the associational rights of these Petitioners and seriously jeopardizes the exercise by others of their First Amendment rights to organize or engage in group protest activity.

It is not disputed that, during the four-to-seven-year period in which the boycott was in effect, unlawful acts were committed in Claiborne County from time to time. There was, however, no evidence whatever suggesting any central design or direction of such acts. The only finding regarding virtually all of the 91 individual Petitioners was that they supported the boycott, belonged to the NAACP, and took part in peaceful marches and demonstrations—not that they or any of them participated in violence, participated in activities supporting violence, or intended to further violent activity.[38]

A state may not constitutionally penalize an individual on the basis of his association with a group or an organization unless it is established that he has both "a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims." *Healy v. James*, 408 U.S. 169, 186 (1972). *See also Elfbrandt v. Russell*, 384 U.S. 11 (1966); *Noto v. United States*, 367 U.S. 290, 299-300

[38] The courts below identified only nine individuals even arguably connected with "violent" acts in the broadest sense of that term. App. A at 15a-18a.

(1961).[39] The Mississippi Supreme Court made no finding that each of the Petitioners or any of them had the specific intent to further the Claiborne County boycott through illegal means. The court merely lumped all of them together with the conclusory statement that "certain of the defendants, acting for all others, engaged in acts of physical force . . .," App. A at 20a, and observed that "the present state of facts" indicates an "agreed use of illegal force." *Id.* at 23a. Those statements do not impute to these Petitioners, or to any of them, the specific intent to commit unlawful acts. The issue here is not whether a few people committed simple assaults or disturbed the peace contemporaneously or even in connection with the boycott. Rather, the question is whether they had the specific intent to further the boycott by unlawful means. The record contains no evidence of any such specific intent on the part of *any* of the individual Petitioners.

Nor was there any showing that any Petitioner's membership in the NAACP formed the requisite affiliation "with an organization possessing unlawful aims and goals." A few of the persons alleged to have committed unlawful acts were members of the Claiborne County chapter of the NAACP, organized sometime in 1966. But, as the court below itself recognized in dismissing out a number of the defendants, membership in the NAACP does not meet the test.[40]

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[39] These principles have been applied to "groups" defined, as here, by conspiracy laws, or to other loosely structured groups. *See United States v. Dellinger*, 472 F.2d 340, 392-94 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973); *United States v. Spock*, 416 F.2d 165, 172-73 (1st Cir. 1969). *See generally* L. Tribe, American Constitutional Law 703-04 (1978).

[40] The court below did observe that

> "The testimony revealed that the defendant NAACP provided attorneys to defend black persons arrested and charged with violating the laws of Mississippi in connection with acts arising from the boycott; and this nonresident corporation

The Mississippi Supreme Court's sweeping reliance upon principles of group and vicarious liability in this case will, unless reversed, have serious implications for the continued exercise of associational freedoms by members of the NAACP and every member of any organization devoted to social or political reforms. The Claiborne County boycott resembled many protest movements by citizens who lack power and influence as individuals but suffer what they view as political or social injustice and join together to make themselves heard. In effect, the Mississippi Supreme Court has held that anyone who supports or joins in peaceful, legitimate political protest activities may be held liable for the unlawful act of another with whom his only connection is common political affiliation.

Unless reversed, the Mississippi Supreme Court decision legitimizes liability by association. It conditions a citizen's right to participate in public protest upon his willingness to undertake financial responsibility for the acts of others. It ignores the rule of *Healy*, *Noto*, and *Elfbrandt* that in the First Amendment context an individual may be penalized only for his own actions and intentions, and provides instead that persons whose goals and actions are entirely lawful may nonetheless be treated as lawbreakers if others, with whom they are not shown to be connected, seek the same goal by unlawful means. The consequences of such a rule

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posted bail bonds and on occasion paid fines of black persons convicted of criminal charges." App. A at 19a, *quoting* App. B at 38b.

This observation—apart from contradicting the testimony (R. 4940)—demonstrates an unprecedented view of the confines of a conspiracy. Quite apart from its inconsistency with the premises of the Sixth Amendment, ascribing liability to the organization that provides a lawyer to a criminal defendant is, in this context, clearly a denial of the First Amendment right of freedom of association. *See NAACP v. Button*, 371 U.S. 415 (1963).

for the future of peaceful political association are so serious that the Mississippi Supreme Court's decision should be reviewed by this Court.

CONCLUSION

For the foregoing reasons, Petitioners pray that a Writ of Certiorari issue to review the Judgment and Opinion of the Supreme Court of Mississippi in this case.

Respectfully submitted,

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July 31, 1981

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81-202

No. 81-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

SUPREME COURT OF MISSISSIPPI

No. 51488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE *et al.*

v.

CLAIBORNE HARDWARE COMPANY *et al.*

Dec. 10, 1980

Rehearings Denied March 4, 1981

Before SMITH, P. J., and SUGG and COFER, JJ.

COFER, Justice, for the Court:

Beginning April 1, 1966, a boycott of retail merchants of Port Gibson and Claiborne County was in effect for some length of time. This suit, in the Chancery Court of the First Judicial District of Hinds County, resulted from the boycott. The suit, brought by Claiborne Hardware Company and twenty-three other complainants, retail merchants in Claiborne County, and filed October 31, 1969, named as defendants the National Association for the Advancement of Colored People (NAACP), Mississippi Action for Progress (MAP), a domestic nonprofit corporation and 146 individual defendants (individuals), (NAACP, and individuals, NAACP, et al.), these individual defendants largely making common cause with defendant NAACP in the suit. The bill of complaint charged defendants with conspiracy to injure and ruin the businesses of the several complainants by tortious involvement with complainants' rights to pursue their lawful trade and business through defendants' conspiracy,

boycott, interference, and restraint of trade. In their suit complainants alleged and charged:

1. The complainants charge that beginning on or about April 1, 1966, and continuing daily thereafter each, every and all of the defendants, corporate, and individual defendants, hereinbefore set forth, combined and entered into an agreement and conspiracy, with a unity of design and purpose and a preconceived plan, the malicious and unlawful object of which was to ruin and cause injury to the hereinbefore named businesses of the complainants and others; that said defendants did not enter into said conspiracy and combination for the purpose of protecting or advancing any legitimate interests of their own; and that said act constituted an unlawful conspiracy.

2. The complainants charge that the means employed by the defendants, and each of them in carrying out and to effect the purpose of the illegal and unlawful combination, plan, scheme, and conspiracy, was and is likewise malicious, illegal and unlawful; that the defendants have since April 1, 1966, daily engaged in and committed malicious, illegal and unlawful acts of injurious falsehoods, deception, force, intimidation, threats, coercion and violence against the customers and prospective customers of the complainants.

3. The complainants charge that in pursuance of the aforesaid conspiracy to injure the businesses of complainants and others, that the defendants and each of them executed and are continuing to carry out said malicious, illegal and unlawful plan and scheme to the great damage of complainants; and that said conspiracy on the part of all and each of said defendants was induced in malice toward the complainants and was and is without justification

or lawful purpose; and that its objects as aforesaid have been and are being accomplished by illegal means and in an unlawful manner.

4. The complainants charge that on or about April 1, 1966, and daily thereafter, the defendants and each of them entered into an unlawful combination among themselves and others who are unknown to complainant to illegally bring about a secondary boycott to the businesses of the complainants and others with the intent and purpose of causing loss to the complainants and others by coercing the customers and prospective customers, against their will, to withdraw and withhold their beneficial business intercourse from the complainants by the infliction of physical injury to said customers and prospective customers on their person and property; by the threat of physical injury; by intimidation so as to put said customers and prospective customers in fear of such injury; through the fear of incurring the displeasure persecution and vengeance of said combination; and by threats to said customers that unless they withdrew or withheld their beneficial business intercourse from the complainants and others against whom the conspiracy, combination and concert of action is directed, that said combination would cause injury to said customers in their person, property and business. Complainants further charge that by the use of threats, intimidation, and coercion, the said defendants intended to overcome and did overcome the will of the customers and prospective customers of the complainants, and by such unlawful and illegal means, intended to and did compel said customers to refrain from trading with the complainants. Complainants further charge that said defendants committed acts and spoke words to said customers and prospective customers of complainants that caused them to fear for their lives

> and safety; and that they were in such apprehension of damage that said customers were and are so influenced thereby as to prevent them from freely trading with complainants, as said customers so desire to do; and that the complainants assert that they at no time material hereto had any dispute, disagreement or controversy with any of the defendants herein or the combination thereof. Complainants further charge that the said illegal secondary boycott was and is an unlawful invasion of their property rights; that complainants have been caused to suffer great harm and damage as a result thereof; and that complainants, because of said malicious attempt to irreparably injure them and each of them, without purpose, by said secondary boycott, are entitled to recover damages jointly and severally from said defendants.

(These allegations were used as complainants' basis for charging interference and restraint of trade on defendants' part, also.)

After delay in the United States District Court and the Fifth Circuit Court of Appeals [*Henry v. First National Bank of Clarksdale*, 50 F.R.D. 251 (N.D.Miss. 1970), 444 F.2d 1300 (5th Cir. 1971), *cert. denied*, 405 U.S. 1019, 92 S.Ct. 1284, 31 L.Ed.2d 483 (1972), *rehearing denied*, 406 U.S. 963, 92 S.Ct. 2057, 32 L.Ed.2d 351 (1972)], trial was begun on June 11, 1973, on the Bill of Complaint and Cross Bills of some of the defendants. After testimony was taken over a long period of time, the chancellor rendered opinion August 9, 1976, which was followed by decree consistent therewith dated and filed on August 19, 1976.

The complainants had prayed for actual damages alleged to be in the amount of $3,542,466.04. The chancellor awarded aggregate money decree to them in the amount of $950,699 plus solicitor fees in the amount of

$300,000, a total recovery of $1,250,699. Chancery jurisdiction was availed of for use of the attachment in chancery statute [(Miss.Code Ann., § 11-31-1 (1972)] and for injunction. Injunction against use of guards at stores, persuading or otherwise procuring potential customers to withhold their patronage, and against individual activity by the defendants was ordered by the decree.

(Although the granting of injunction has been assigned as error, the error has not been argued, and NAACP, et al. say, at the conclusion of their brief ". . . the injunctive aspects of the case are now moot . . . .").

Appeal was taken therefrom to this Court. Defendants-appellants successfully invoked the aid of the federal court for relief against full compliance with our appeals supersedeas statute [*Henry v. First National Bank of Clarksdale*, 424 F.Supp. 633 (N.D.Miss.1976), *aff'd* 595 F.2d 291 (5th Cir. 1979)]. Appellants do not assign as error the chancellor's failure to award relief on their cross bills, nor is there a cross appeal by the complainants as to amount of the decree nor as to the court's dismissal of the cause as to certain of the defendants.

On appeal, twenty-eight errors are assigned, but appellants' arguments are made as to the following propositions:

1. The appeals for a boycott to protest racial discrimination were lawful communications protected by the First Amendment.

   A. The allegedly "secondary" character of the boycott is both irrelevant and unproven.

   B. The chancellor's conclusions regarding intimidation are unsupported by record and Constitutional limitations.

2. All of the three theories of liability adopted by the chancellor were erroneous.

A. Mississippi's anti-boycott statute cannot support the finding of liability.

1. The statute purports to forbid activity protected by the First Amendment and is therefore unconstitutional on its face.

2. Retroactive application of the anti-boycott statute was erroneous under state law and deprived appellants of due process of law.

B. Mississippi's trade restraint statutes do no apply to the Port Gibson boycott.

C. The common law of conspiracy to commit tortious interference with business does not support the finding of liability.

3. The chancellor erred in awarding damages without first separating out the amount of loss resulting from Constitutionally protected activity.

4. The award of damages was speculative and improper in many respects.

A. The chancellor erred in awarding damages for goodwill.

B. The chancellor erroneously depended upon indirect evidence of lost profits where more reliable evidence was available.

C. In obvious ways, the appellees' theories for calculating lost profits were improper and yield only speculative results.

D. The chancellor erred in failing to correct for appellees' mitigation of their losses.

E. The chancellor erred in awarding damages representing prejudgment interest on lost earnings.

5. The award of attorneys' fees was error because the anti-boycott statute was inapplicable and for other reasons.

A. It was error to include in the award attorneys' fees incurred in federal litigation.

B. The record contains no evidence and the chancellor made no findings to permit appellate review of the attorneys' fee award.

6. The chancellor abused his discretion in denying appellants' motion for a change of venue.

On liability, we affirm the Chancellor's decision as to some defendants, and reverse it as to others, as hereinafter indicated. We reverse as to damages and remand the case to the lower court for trial on the issue of damages only.

(MAP has filed its own assignment of errors and separate brief, all of which will be noticed later in this opinion.)

Reaching early appellants' Point VI, attacking the Chancery Court's failure to grant appellants' request for a change of venue to Claiborne County, we find no error in the retention of the case in the Chancery Court of the First Judicial District of Hinds County.

The suit might properly have been brought "in the Chancery Court of any county where the defendant, or any necessary party defendant, may reside or be found." Mississippi Code Annotated, Section 11-5-1 (1972). The suit was for injunction and recovery of damages against multiple defendants largely resident of Claiborne County. However, at least three defendants, including NAACP and MAP "resided" in the First Judicial District of Hinds County.

Appellants, in support of this assignment of error have cited *Gillard v. Great Southern Mortgage & Loan Corp.*, 354 So.2d 794 (Miss. 1978), and *Illinois Central Gulf RR v. Stedman, Admrx.*, 344 So.2d 468 (Miss. 1977). The *Gillard* case involved no resident of the county wherein the suit was brought. The *Stedman* case was brought in a county permissible for venue purposes by Section 11-5-1, but far from the county of the accident claiming the life of Mrs. Stedman's deceased. This Court did not hold it to be error not to grant a change of venue on that account, but pointed out that, on retrial, the reversal being on faulty instruction, the circuit court should again consider the motion for change of venue under the doctrine of *forum non conveniens.*

The granting of the motion was addressed to the sound discretion of the court, and, in order to assert error in refusing the change, it is necessary for the movant to show prejudice to him in the refusal, such prejudice not appearing here. *Gillard*, supra; *Mississippi State Highway Comm. v. Rogers*, 240 Miss. 529, 128 So.2d 353 (1961); *Stokes v. State*, 240 Miss. 453, 128 So.2d 341 (1961).

No reversible error was committed in the court's denial of the requested change of venue.

Black people number more than three-fourths of the population of Claiborne County. With the momentous weight of civil rights progress augmented in great measure by federal civil rights laws and led by dedicated activists, by the time the boycott here involved had begun the blacks had obtained overpowering authority in the ballot box. In the elections which took place in 1967 they from their number elected the chancery clerk, and might easily have put members of their ranks in practically all of the county's elective offices.

Late in 1965, a group of their numbers, whether spontaneously or by authority of some group is not clear,

had put together certain complaints and areas of relief which concerned them. About the same time, the NAACP movement had taken hold in Claiborne County which movement resulted in the organization of a chapter whose power and desires were being expressed. The late 1965 points of relief and the exponents of them were silenced or otherwise replaced by a group which had the leadership of Charles Evers, Field Secretary for the NAACP. In two missives they delineated and articulated to the addressees thereof their immediate concerns.

The first of the communications, dated March 14, 1966, was addressed to the mayor and board of aldermen (obviously of the City of Port Gibson), the Claiborne County Board of Supervisors, the Board of Education and Sheriff McKay (both obviously of Claiborne County). The needs therein expressed were prefaced by a frank consideration of what may be correctly regarded as an alternative or an option probably facing those who had the power to satisfy those needs:

> We hope it will not be necessary to resort to the kind of peaceful demonstrations and selective buying campaigns which have had to be used in other communities. It takes manpower, time and energy which could be better directed at solving these problems which exist in Port Gibson and Claiborne County by mutual cooperation and efforts at tolerant understanding.
>
> No one likes to have to resort to picketing and other kinds of demonstrations . . . Just as no one likes to be the target of this kind of demonstration. But this sort of thing is inevitable unless there can be real progress toward giving all citizens their equal rights. There seems to be no other alternative.

There followed twenty-one needs (less two left blank therein, Numbers 4 and 5), as follows:

1. A community affairs committee, made up of both races, needs to be officially constituted by the Mayor and Board of Aldermen, the Board of Supervisors and the undersigned, so that future problems may be anticipated and solved before they reach a breaking point.

2. All public schools of Claiborne County and Port Gibson should be desegregated, both faculty, staff and student body this coming September, 1966.

3. Three Negro policemen should be employed in Port Gibson so that there will be impartial enforcement of the laws. The Negro policemen should be assigned to work with the white policemen on an integrated basis, with power to arrest any lawbreaker.

4. (Omitted)

5. (Omitted)

6. Negroes should be employed in the welfare office so that the County may demonstrate its good faith and impartiality.

7. All business houses in the county should comply with the spirit and letter of the Civil Rights Act of 1964 by treating all customers alike and according them the use of all facilities.

8. Verbal or physical abuse of citizens by law enforcement officers must cease and Negroes are not to be addressed by terms as "boy," "girl," "shine," "uncle," or any other offensive term, but as "Mr.," "Mrs.," or "Miss," as is the case with other citizens.

9. Crossing guards are to be posted at all schools, not just the white schools.

10. All funerals shall be accorded police escort.

11. Negroes should be named to the Board of Education. And they should be Negroes satisfactory to Negro leadership.

12. Public improvements should [sic] as roads, street, lights and sewer system are most needed in predominately Negro residential areas now because of past neglect. A program for remedying this situation should be embarked on immediately.

13. The Mayor, Board of Aldermen, County officials, businessmen and church leaders should denounce all extreme groups.

14. The courtroom and all other public facilities are to be desegregated immediately by order of the proper officials. This applies to all educational, recreational and other public-owned facilities.

15. Immediate steps must be taken to insure the selection of Negroes for jury duty in as close a relationship to the population breakdown as possible.

16 Provision must be made for the use of Negroes as election officials and for all other public duties.

17. Official and semi-official boards and commissions, now and in the future, must include appropriate numbers of Negro citizens.

18. The immediate desegregation of the Claiborne County Hospital, staff, and patients.

19. Bus stations must be integrated so that Negroes may be able to use all facilities.

20. All snack bars should be removed from classrooms.

21. Salesmen should be barred from entering classrooms interrupting classes.

The letter closed with the request, "Please communicate with the undersigned so that we may arrange a

meeting to discuss the details of solutions to these problems." It was signed by Calvin C. Williams, Chairman, Alexander Collins, Secretary, and James N. Dorsey, Floyd D. Rollins, Nathaniel H. Jones, Walter L. Griffin, Sr., and Mack Tisdale.

On March 23, 1966, a letter was addressed to all addressees of the March 14, 1966, letter, and to the Chamber of Commerce. It conveyed to its addressees the needs 4 and 5, omitted in the March 14, 1966, letter, expressed as follows:

> 4. All stores must employ Negro clerks and cashiers.
>
> A. Two or more deputy sheriffs must be hired.
>
> B. The city limits be extended to include Thompson Sub Division and all other areas where there is a concentrated group of citizens of Port Gibson.
>
> C. A strong housing code should be adopted and enforced.
>
> D. The teacher's lounge should be restored for teachers use rather than a centralize area for selling.
>
> 5. That a Negro County Agent be employed, since there is more than 8,239 Negroes in Claiborne County.
>
> A. That a full time home demonstration agent be employed to assist the farm women and young ladies to become effective Homemakers, including, planning, feeding, and caring for the farm families.

It ended with the statement, "We shall be awaiting your answer by April 1, 1966."

In addition to the signatories to the earlier letter it was signed by Charles Evers.

This group and these objectives appear from the record to have been duly appointed and to have been arrived at and adopted by the NAACP in regular meeting.

Satisfactory response was not made during the interval prior to April 1, 1966, and, led by Evers, the boycott was begun on April 1, 1966, with a march along the white business area of Port Gibson and with a speech by Mr. Evers on the undertaking being launched. Upward of a hundred witnesses were put on the stand during the trial (most of them defendants called adversely by the complaints), and testified, and as to be expected in such case, varying accounts of the boycott were discussed from which the conclusion is overwhelmingly warranted that it was conducted in serious fashion with planning, and expertise in control.

The NAACP met about weekly at First Baptist Church of which the Reverend Dorsey, one of the signatories of the March 14, 1966, and March 23, 1966, letters noticed above, was pastor. There were the marches and the pep speeches usually a part of such undertaking. There were the pickets with their signs; the group of men almost fifty in number who were specially conspicuous because they wore black headwear and perhaps other black clothing, so that they would be easily distinguishable. There were the "Black Times" publications, enshrouded by very little mystery as to editorship, etc., wherein the names of those being boycotted periodically appeared as well as names of some observed breaking the boycott. *Eastern States Retail Lbr. Dealers v. United States*, 234 U.S. 600, 34 S.Ct. 951, 58 L.Ed. 1490 (1913). There came into being the successful black store, "Our Mart."

The picket signs, among other messages, gave information that the boycott was that of the NAACP. Many of the picketing personnel were young children.

Regrettable and lamentable events which took place during the boycott, including the following: Dr. Martin Luther King, Jr. was assassinated on April 4, 1968, at Memphis under circumstances of common knowledge. On April 18, 1969, one Roosevelt Jackson was accused of interfering with law enforcement officers of Port Gibson in their effort to make an arrest of another. Later in that day policemen, one black and the other white, went to arrest him on the charge and a struggle resulted, details of which are clouded, ending in the fatal shooting of Jackson. At Dr. King's slaying there arose generally an attitude of frustration among the blacks for whom he had worked and lived. This sense of loss is shown to have intensified the Claiborne County boycott as it also gained expression in incidents of significance. (It should be said here that there is evidence also in the record from which it might be concluded that the unfortunate event caused not even a ripple in the blacks' undertaking.) The Jackson occurrence caused the boycotting blacks to become highly incensed resulting in their demand that the policemen involved be instantly discharged and even in their requirement that the entire police force be removed. Black activity took place at Jackson's home, at the hospital to which he was taken in an act of futility, at the Courthouse, and at First Baptist Church. Members of the Mississippi State Highway Patrol were sent in to help control the situation. There was weapons' firing, by whom is not clearly detailed in the record. Physical searches netted nothing in the way of weapons, but a search of a musical instrument in the church uncovered a number of weapons. The boycott which had reduced itself to some extent by the time of Jackson's death was then intensified and the entire Claiborne County's group of white merchants were brought within its prohibitions.

The group of men above noticed came into organized being about a month after the boycott was begun. They

were variously called "Black Hats," "watchers," "guards," "enforcers," "Deacons," or "Deacons for Defense." Their assignment, or their reasons for existence, was described as for the purpose of seeing to it that blacks who would trade with the boycotted white merchants were made aware of the boycott and that their cooperation was desired, and for the blacks' protection. There is testimony that these "watchers" organized themselves into a quasi-military group, drilled, bought weapons and ammunition, had target practice, two-way radios (automobile and "walkie-talkie" types), and they were sufficiently shown to have stood at corners or walked assigned areas, and stopping and interviewing would-be customers entering stores, within the area of the "watchers'" assigned patrols.

The chancellor rendered an able, detailed, analyzing opinion, fully covering the voluminous testimony. His portrayal, well supported in the record, presents a facet of the enforcement of the boycott:

> The thread of fear and violence is woven throughout this case. Sheriff McKay testified that many times black people who wanted to trade with whites appealed to him for protection. He said at least 100 blacks complained to him that they had been interfered with when attempting to trade with white merchants. He said that when the "store watchers" relaxed the boycott would "loosen up," particularly on the outskirts of Port Gibson and in Hermanville and Pattison.
>
> Very shortly after the boycott started, Sheriff McKay was near Hudson's Store when he noticed a group of black people gathered around a car parked in front of the store. McKay approached the crowd and said he heard the defendant Calvin Williams tell a black man named Darden that he (Darden) could not go into the store because it was

under boycott. McKay intervened, whereupon, he said, he heard Calvin Williams say to Darden: "You can go in, but the sheriff here isn't going to sleep with you at night." Darden did not go into the white store.

The atmosphere of fear that prevailed among blacks from 1966 until 1970 is strikingly revealed in the testimony of many of the witnesses.

James Gilmore, a black man, ignored the boycott. On the night of August 22, 1966, Gilmore's home was shot into. Elmo Scott, Jr., a member of the NAACP and of the "Deacons", together with two other young black men, Calvin Bailey and James Whitney, were arrested for this act and were convicted. The Mississippi Supreme Court reversed and remanded the case,[1] because of exclusion of Negroes from the grand jury. On retrial the jury was unable to agree. At the time of the trial, these people had not been retried.

Defendant Rudolph J. (Rudy) Shields, formerly of Chicago, was the principal figure in several altercations. He boasted that he was the "most jailed person in the Claiborne County boycott." This man was the acknowledged leader of the "Deacons."

Laura Cullens testified that she lived about a quarter-mile from the city limits of Port Gibson on Highway 18. She refused to join the NAACP, and she ignored the boycott. Her name, among many others, was called out at the NAACP meetings, and she was derisively referred to as an "uncle Tom." She was vilified and abused. In November 1966 shotgun pellets were fired into her home.

Muriel Cullens, a son of Laura Cullens, did not observe the boycott and was the target of harassment

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[1] *Whitney v. State*, 205 So.2d 284 (Miss. 1967).

by blacks. Cullens' car was run into and badly damaged, and a brick was thrown through the windshield.

In April 1966 soon after the boycott was started, Johnny Cox, a black man, and his wife were stopped by "store watchers" who attempted to prevent Mrs. Cox from going into the O. K. Cleaners, a white-owned business, to get some clothing. They had to get police protection in order to go into this cleaning establishment. About a week later, shotgun blasts were fired into the Cox home near Hermanville. Pistol shots were fired at Cox.

James Bailey, a 200-pound ex-football player, testified regarding his activities as a "store watcher." He was instructed to stop any black person he saw about to enter a white business house. He said that he had been a "bad boy" and had been convicted for molesting a child, resulting in sentence to the State Penitentiary. He was instructed to take the name of any black person going into a white-owned business and report same to defendant Pete Gusta. On one occasion, he stopped Willie Butler, an elderly black female whom Bailey referred to as "Nig" Butler, as she was going into the Piggly-Wiggly Store. Despite his warnings, she went into the store and purchased some items of groceries. He watched her house and saw groceries delivered there by a white-owned store. He instructed her to stop trading with whites, whereupon she told him she would trade with whom she pleased. Bailey went into this elderly woman's yard and destroyed her flower garden by way of punishing her.

There is evidence in the record that an elderly black man called "Preacher" White (Deceased at the time of trial) was stripped of his clothing and

whipped by a group of young blacks because he refused to honor the boycott.

Eddie Lewis, a black man, refused to join the NAACP and refused to honor the boycott. He was warned by Rudolph Shields to stay out of white-owned stores. Lewis purchased a bottle of whiskey at a white-owned liquor store, and was observed by Alfred Lee "Fats" Davis, a NAACP member and activist in the black boycott. Davis took the whiskey away from Lewis and denounced him in highly-uncomplimentary language for dealing with white people.

Willie Myles testified that he refused to stop trading with white stores. His name was read out at NAACP meetings as a "boycott breaker." He said he received threatening telephone calls. On one occasion, the Port Gibson police had to give him an escort when a carload of young blacks began following him. He received a warning that he was going to be whipped for buying gasoline at a white-owned service station.

Jasper Coleman, a black man, testified that he did not join the NAACP and continued to trade with white merchants after being warned by Walter Griffin and Calvin Bailey. The tires on Coleman's automobile were slashed.

Emerson Davis, a black commercial fisherman, testified that he refused to join the boycott. He testified that Rudolph Shields, Jimmy Ellis and three other blacks grabbed him, carried him down a street and beat him. He was denounced as an "uncle Tom." He said that he received threats on his life. James Bailey told him that he was going to kill him (Davis).

Unquestionably, the word "got around" in Port Gibson and Claiborne County that physical harm, as well as vilification and ostracism, could very well be the lot of any black person observed trading with whites. As a matter of fact, these things were promised by the Field Secretary of the National NAACP, Charles Evers, on at least two occasions, and it is apparent that the black people believed him. This NAACP-sponsored boycott was a definite success insofar as economic damage to the white merchants was concerned, even though the victims—the white merchants—had no power to grant the demands made on the county and municipal authorities.

The testimony revealed that the defendant NAACP provided attorneys to defend black persons arrested and charged with violating the laws of Mississippi in connection with acts arising from the boycott; and this nonresident corporation posted bail bonds and on occasion paid fines of black persons convicted of criminal charges.

[It should be here noted that Evers promised, in what appears to have been a nationwide televised speech, that "if we catch you going in any of them racists white stores, we're gonna break your . . . neck."]

Mrs. Leesco Guster, one of the appellants, testifying as to Preacher White's alleged experience as a boycott breaker, said, "It was just talk, and I can't recall where it came from, because when talk starts in a small town, it goes everywhere."

Testimony by some of the appellant MAP's witnesses tended to show fright on the part of the cooks in the kitchens of Head Start, a service supplied by MAP, causing them to refrain from handling groceries from white grocers. Attorneys for appellees put into the record that they "will stipulate that all of the Head Start

MAP employees in Claiborne County were afraid to do business with white merchants."

The chancellor found, as he was bound to do from the record, that:

> In carrying out the agreement and design, of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers. Intimidation, threats, social ostracism, vilification, and traduction were some of the devices used by the defendants to achieve the desired results. Most effective, also, was the stationing of guards ("enforcers," "deacons," or "black hats") in the vicinity of white-owned businesses. *Unquestionably, the evidence shows that the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants.* (Emphasis added).

In *Southern Bus Lines, Inc. v. Amalgamated Association of Street, Electric Railway and Motor Coach Employees*, 205 Miss. 354, 38 So.2d 765 (1949), a decision involving a labor strike attended by violence against which, in part, an injunction was being sought by appellant, this Court said in quoting from *Milk Wagon Drivers Union of Chicago, Local No. 753 v. Meadowmoor Dairies*, 312 U.S. 287, 295, 61 S.Ct. 552, 555, 556, 85 L.Ed. 836, 842 (1941):

> . . . Judges need not be so innocent of the actualities of such an industrial conflict as to find in the Constitution, state or federal, a denial of the right of Mississippi to conclude that the use of force was not the conduct of a few irresponsible outsiders. The Fourteenth Amendment still leaves the state ample

discretion in dealing with manifestations of force in the settlement of industrial conflicts.

(205 Miss. at 361, 362, 38 So.2d at 770).

It appears from the demand letters noticed hereinabove that some of the areas for remedial action were within the power of the boycotted, and that others of them were public in their nature within the purview of the Port Gibson officials, the Claiborne County officials, and the Chancery Court. As to these public complaints, the merchants could only use the power of their influence to whatever degree such influence reached. The blacks expected the application of that influence and pressed into operation the boycott of the white merchants with that goal in mind. On April 18, 1969, when Jackson was killed, as noted above, at the hands of two policemen, one black and the other white, there was demand articulated that these officers be discharged, and the boycott was intensified and made again applicable countywide. Ira Thomas testified that, "the white merchants didn't have anything to do with Jackson's death—but you've got to hurt who you can . . . ."

There was extended testimony relative to the demands for the employment of black citizens at responsible jobs, and witnesses expressed the view that these demands should be met even if either it meant the discharge of white employees already on these jobs or that there would be two employees doing the job requiring only one employee to do, demands for reverse racial discrimination, as found to be true in *Hughes v. Superior Court of California*, 339 U.S. 460, 70 S.Ct. 718, 94 L.Ed. 985 (1950).

Appellees rely in part on Mississippi Code Annotated, section 97-23-85 (1972), which was adopted by the 1968 session of the Legislature and became effective July 30, 1968. Its constitutionality is vigorously attacked by appellants who assert that it is contrary to the right of

free speech guaranteed by the First Amendment to the United States Constitution.

The boycott began April 1, 1966. Section 97-23-85 was adopted in the 1968 legislative session, and went into effect July 30, 1968, when the boycott had been in operation for upward of two years. The statute clearly reflects no retrospective force, but only prospective. *Mladinich v. Kohn*, 186 So.2d 481 (Miss. 1966), and the many decisions therein contained. We are of the opinion that the statute is not applicable to the present decision.

Appellees likewise, in part, rely upon our restraint of trade statute, section 75-21-1, *et seq.*, and argue that the activity complained of operated to restrain their trade and their right to trade. The United States Supreme Court has seen fit to hold boycotts to achieve political ends are not a violation of the Sherman Act, 15 U.S.C. § 1 (1970), after which our statute is patterned. We, in turn, have been influenced by the decisions of that Court in interpreting and applying it. While economic goals were sought by appellants and while economic good was challenged and endangered in and caused to suffer by, the boycott, we find that the present decision may be made without application of the restraint of trade statute. *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965); *Eastern Railroad Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961). See also, *State of Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir. 1980), appeal for cert. filed, 49 U.S.L.W. 3005 (June 25, 1980), No. 79-2039; and *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969).

The bill of complaint relies in part upon the common law protections which had formed the base for this Court's decisions in *Southern Christian Leadership Conf. v. A. G. Corp.*, 241 So.2d 619 (Miss. 1970), and *Southern Bus Lines, Inc., supra.* We regard that law as determinative here.

Judge (now Chief Judge) Coleman of the Fifth Circuit Court of Appeals clearly stated in *Smith v. Grady*, 411 F.2d 181, 187 (5th Cir. 1969), that: "Any kind of boycott is unlawful if executed with force or violence or threats . . . ." If any of these factors—force, violence, or threats—is present, then the boycott is illegal regardless of whether it is primary, secondary, economical, political, social or other. All of these factors are here present, and the boycott was illegally operated and we do not need to examine into its type, whether primary or other.

The presence of a conspiracy is beyond peradventure. *Southern Christian Leadership Conf., supra; Wagley v. Colonial Baking Co.*, 208 Miss. 815, 45 So.2d 717 (1950); *New York Mailers Unions v. National Labor Relations Board*, 316 F.2d 371 (D.C.Cir. 1963).

An examination of our statute, section 97-1-1, and our decisions in *Southern Christian Leadership Conf., supra; Mississippi Power & Light Co. v. Town of Coldwater*, 234 Miss. 615, 106 So.2d 375 (1958); and *Southern Bus Lines, Inc., supra*, will reveal the fact that a conspiracy to be a conspiracy, must be tainted with illegality, there must be an agreement to accomplish an illegal objective, or an agreement to accomplish a legal objective by the use of illegal means. The agreed use of illegal force, violence, and threats against the peace to achieve a goal makes the present state of facts a conspiracy. We know of no instance, and our attention has been drawn to no decision, wherein it has been adjudicated that free speech guaranteed by the First Amendment includes in its protection the right to commit crime.

The *SLC* opinion, *supra*, brought under unfavorable study the matter of boycotts without advance warning as to grievances held against the boycott victim, the same as here exists.

Mississippi Code Annotated, section 97-23-83 (1972), adopted and effective from February 9, 1966, a date antedating the beginning of the boycott, makes it a criminal offense to threaten with bodily harm, intimidate, or coerce a person to prevent the offended person from doing business with another. This statute was applied in *Shields v. State*, 203 So.2d 78 (Miss. 1967). Shields was one of those activists helping in the boycott, and was convicted of violating this statute. His case was reversed, however, because of deficiency in the jury list from which the convicting jury had been drawn.

That statute declares it to be a misdemeanor and punishable:

> If any person shall in any manner threaten with bodily harm, intimidate or coerce another person to prevent said person from lawfully trading, or carrying on business, including buying or selling, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year in the county jail or be fined not more than one thousand dollars ($1,000.00), or both.

That statute applied to, and was violated in, the coercion, intimidation, and threats which were a part of the boycott activity and contributed to its almost complete success.

The present case, in the relief sought and granted, the conduct of the boycott, and the applicable law, is so strikingly similar to this Court's decision in *Southern Christian Leadership Conference, supra*, that that decision and the law therein held to be applicable are compelling here, and by it we are impelled to find that liability for damages attached to NAACP and, subject to some exceptions hereinafter noticed, to the individual defendants.

MAP, as earlier herein noticed, filed its own assignments of error incorporating those of NAACP, et al. It also assigned as error the holding that MAP was a part of the conspiracy to boycott illegally, and the chancellor's rejection of its defense of duress, and further assigned as error the failure of appellees to furnish bill of particulars and the Court's finding that it was subject to suit and damages award in the absence of consent by the United States Government.

MAP is a creature of Mississippi statute as a nonprofit corporation. Mississippi Code Annotated, section 79-11-1, *et seq.* (1972). It was incorporated on September 13, 1966, for implementation of the government's Head Start program, 42 U.S.C. § 2928, *et seq.*, its participation therein being the provision of food, educational and other services to needy children in twenty counties of the state of which Claiborne County is one. The program is aimed specially at pre-school children of low-income families. It began operation in Claiborne County on January 16, 1967, with the intention to buy groceries from black and white stores, which groceries would be needed for meals for the children being benefited by the program. This plan was immediately foundered by the boycott, causing inquiries, investigations, conferences, and planning within MAP and between MAP and boycott leaders and others. A program arrived at to buy from four black groceries and four white groceries was immediately abandoned because the Head Start cooks were afraid to do business with the white merchants (this fact established in the record by stipulation of counsel for appellees), and Evers threatened to banish the program from the county rather than to permit the expenditure of government money with white merchants contrary to the very boycott itself. Finally, MAP adopted formally a course of action which required the purchase of all groceries from black stores, and, if these could not meet the MAP needs, then purchases would be made outside the county.

MAP sought and obtained an opinion or opinions from its attorneys, upon which it issued non-participation guidelines in political matters.

The record does not warrant a finding that MAP conspired with any of the co-conspirators, nor that it acted as a principal or as a willing participant in the boycott program. Rather, in our view, it operated as it did through fear on the part of its cooks (all black) for their safety, and to avoid the destruction or great impairment of its beneficial program in the county. We are of the view that the able chancellor erred in including it as a judgment defendant, and, as to it, the decree will be reversed and judgment will be rendered here for MAP.

An adequate search of the record reveals to our satisfaction, also, that for insufficient proof, lack of proof, or otherwise, appellees did not establish their case against certain of the defendants, and that including them among those against whom money decree and injunction were awarded was erroneous. As to them, the cause will be reversed and judgment will be rendered here for them. These are: Priscilla Brooks, Mack Louis Davis, Ethel Graise, Charlie Harris, Albert Jackson, Bessie Newman, D. A. Newman, Henry Otis Preston, Roman Shorter, Leon Tarleton, Alex Dorsey, Ella Dorsey, Bobby Kelly, Beatrice Atlas, Lela Jones, Viola Robinson, Dora Shorter, Rosa Shorter, Annie B. Smith, Alonzo Warner, Bonnie Wells, Eli Brooks, Maggie Clark, Mary Durham, John Eggleston, John Ellis, Rachel Ellis, Mrs. E. J. Jennings, Clarence Lucas, Early Wren, Roosevelt Owens, Delores Smith, Lessie Mae Walls, Ethel Warner, Gussie Pearl Wilson, Willie Wilson, and Ruby Wren.

We next consider the amount of damages awarded by the chancellor to 12 complainants as detailed in the following schedule:

	Loss of Earnings From Business 1966-1972	Loss of Interest on Earnings 1966-1972	Loss of Goodwill as of 12/31/72	Penalties	TOTAL
Claiborne Hardware Company, Inc.	$ 10,874	$ 3,313	$ -0-	$ 500	$ 14,687
Q. H. McDaniel, Jr. d/b/a McDaniel Pharmacy	117,653	21,438	26,460	500	166,051
James E. & George Hudson, d/b/a Hudson Brothers' Piggley Wiggly Store	174,315	40,882	-0-	500	215,697
Joe Ellis, Mrs. Ben Mullen, & Miss Ella Mae Ellis, d/b/a George Ellis Food Store	27,101	7,040	-0-	500	34,641
Waddy and Rosalie Abraham, d/b/a Jitney Jungle	70,351	12,213	59,153	500	142,217
Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store	52,447	4,236	96,633	500	153,816
W. H. Hay, d/b/a OK Cleaners & Shirt Laundry	47,889	7,951	26,740	500	83,080
Murad & Mildred Nasif, d/b/a M&M Superstore and Washateria	75,463	16,950	-0-	500	92,913
Port Gibson Lumber & Supply Co., Inc.	2,500	850	-0-	500	3,850
Charles R. Dobbs, d/b/a Western Auto Associate Store	13,994	2,859	-0-	500	17,353
Allen Motor Co., Inc.	2,468	839	-0-	500	3,807
Mrs. Egard A. McCaa, d/b/a Town & Country	11,302	2,458	8,327	500	22,587
	$606,357	$121,029	$217,313	$6,000	$950,699

In addition, the chancellor allowed complainants $300,000 attorneys' fees under section 93-23-85, Mississippi Code Annotated (1972). The award of attorneys' fees was improper because the statute has no retroactive effect as stated earlier in this opinion.

We also hold that the chancellor was in error in allowing a penalty of $500 to each of the 12 complainants under section 75-21-9, Mississippi Code Annotated (1972), because our restraint of trade statute, section 75-21-1, *et seq.*, Mississippi Code Annotated (1972), has no application to boycotts to achieve political goals.

The chancellor also allowed $121,029 for loss of interest on earnings from 1966 to 1972. Reduced to its essential elements, this is simply an allowance for pre-judgment interest and is not permitted under our decisions. In cases involving unliquidated claims for damages, interest can be allowed only from the time of judgment. *Alton v. Wood*, 300 So.2d 786 (Miss.1974); *McDaniel Bros. Construction Co. v. Jordy*, 195 So.2d 922 (Miss.1967).

The chancellor allowed the 12 complainants $606,357 for loss of earnings from business for the years 1966 to 1972 in the exact dollar amount set forth in Exhibit C-63 entitled, "Special Report Determination of Losses of 12 Business Establishments of Port Gibson, Mississippi, for the years 1966-1972 inclusive." The report was prepared by a firm of CPA's who calculated lost earnings upon the projection by Dr. Paul T. Oliver of the sales lost during the period. Complainants' claim for damages must stand or fall on the accuracy of Dr. Oliver's projection of sales, the underlying data upon which the projection was based, and the application by the accountants to each of the individual businesses.

Dr. Oliver, an associate professor of Economics at the University of Mississippi, testified as an expert and explained the graphs and computations made by him. Dr. Oliver made graphs of sales for the years 1960-65 and projected the sales for each business for the years 1966-72. The graphs depicted a trend line for sales which included an inflation factor of 3.2%. The difference between actual sales and the trend line sales represent his

conclusions as to the dollar amount of lost sales for the years 1966-72. The accounting firm of Chapman, Redditt and Grantham then converted lost sales into lost earnings. The accountants explained the basis for converting lost sales into earnings as follows:

BASIS FOR CONVERTING LOST SALES INTO LOST EARNINGS

The percentage of net earnings to gross sales was computed for the six year period 1960-65 and averaged in order to determine the means of converting lost sales into lost earnings for 1966 and the years thereafter.

This percentage represents the average earnings which resulted from sales during a span of normal years without the influence of extraordinary events. The six year period (assuming the business was operating in the six prior years) gives a broad base for an accurate measurement of earnings. Accepted accounting procedures normally call for at least a five-year base in measuring business performance for other purposes.

METHOD OF COMPUTING LOST EARNINGS RESULTING FROM LOST SALES

In computing lost earnings resulting from lost sales, the following major assumptions were made:

(1) Each business should be viewed as a "going concern" which would have continued in business until the present (12/31/72) without a boycott.

(2) Lost sales as computed by Dr. Oliver are the basis for computing lost earnings.

(3) If recovery of sales is made above the trend line in any of the years subsequent to the initial period of loss, total recovery is assumed to have

been made. Therefore, any losses of sales subsequent to such recovery are not used in determining lost earnings.

In computing lost earnings resulting from lost sales, the accountants added the gross sales for the base period, 1960-65, and divided this into the total net earnings for the base period resulting in a percentage representing net earnings. The projected sales with inflation were multiplied by the percentage of net earnings for the base period, the result being projected earnings. Actual earnings for each year, where applicable, were deducted from the projected earnings leaving the earnings lost. This method did not take into consideration any change in the pricing structure or mark-up of goods for sale. We note that gross profit, which is sales less cost of goods sold, decreased in some of the businesses for the period 1966-1972, which leads us to the conclusion that pricing structure of some of the businesses must have changed. When gross profits are reduced net earnings are affected. In order for the computation of lost earnings to be accurate, pricing policies of the businesses involved must be taken into consideration.

The conversion of lost sales into lost earnings was based on Dr. Oliver's calculations of projected sales with inflation. Dr. Oliver was furnished gross sales for each of the businesses for the base period and from this date projected sales with an inflation factor added.

Dr. Oliver candidly admitted that he made no study of all facts relevant to management of the businesses to determine what caused deviations in the base period. He said his study showed that something happened to all 12 businesses almost simultaneously, and if he were to make a study to discover all facts relevant to the fluctuation in gross sales he would consider population growth, disasters, and other things of like nature. He stated he would have included a number of factors other

than gross sales and specifically listed: managerial skills, a change in amounts spent on advertising, increases in fixed costs of employees and decline in the availability of money to spend. He said the only factor communicated to him was the boycott and that there might well be other factors. He assumed the impact on sales was caused by the boycott and concluded the boycott, as an economic sanction, had a very dramatic impact, which was its goal. He testified that there was a recession in 1970 and he would not exclude this factor from the trend sales line but did not show that the effect of the recession was included. He stated the recession would have had a dramatic effect on the business of Claiborne Hardware.

One of the problems with the projected sales as calculated by Dr. Oliver is that his calculations failed to take into consideration other facts which we feel would affect the estimate of future sales. (1) Would additional inventory be required to increase sales? (2) Would the individual complainants have the capital necessary to increase the inventory, if necessary? (3) What would the additional capital cost? (4) Would the physical plant of each business be large enough to house an increased inventory or would additions be necessary? (5) Was there any change in management or employees that would affect the volume of sales?

We are of the opinion that these factors, together with the factors mentioned by Dr. Oliver, should be taken into consideration in making an estimate of future sales and that inclusion of all of these factors, or their exclusion with an explanation, if not applicable, is necessary for one attempting to prove lost earnings.

Another problem with the projected sales with inflation is that the gross sales furnished Dr. Oliver for the base period are not consistent. In some gross sales included sales taxes, in other sales taxes were excluded, and in some the inclusion or exclusion of sales tax varied

from year to year. We recognize that these variations might have a minimal effect on the projections, but since this case is being reversed for retrial on the issue of damages, the gross sales for the base period should be stated accurately and consistently.

The chancellor also allowed some of the complainants damages for the loss of good will. Good will was defined in the transmittal letter as follows:

> . . . Goodwill is an intangible asset which exists when the actual or expected earnings produced by the assets of a business, exclusive of goodwill, are in excess of a normal return. Goodwill is generated by any causes of attractive earnings results, such as satisfactory customer relations, location, good employee relations, or "know-how."
>
> The measurement of goodwill is most commonly necessitated when a business is purchased in order to determine a suitable purchase price for the entire business entity and is, therefore, often determined by sheer bargaining.

When a business was sold by a willing buyer to a willing seller, good will is the amount of the purchase price in excess of the tangible assets of the business.

The accountants also explained, in their letter of transmittal, their method of arriving at good will.

> (3) Capitalization of Excess Earnings—a percentage return on the average annual value of the tangible assets of a business is determined, using a period of years immediately prior to the valuation date. The amount of the percentage return on tangible assets, thus determined, is deducted from the average earnings of the business for such period and the remainder is considered to be the amount of the average annual earnings from the intangible assets (goodwill) of the business. This amount capitalized

at an applicable percentage is the value of the goodwill.

The Capitalization of Excess Earnings Method is considered the most theoretically sound approach by standard accounting texts and is established by the Internal Revenue Service as its accepted guideline in Revenue Ruling 68-609. (Revenue Ruling 68-609 is cited in its entirety in Appendix A of this report). We have, therefore, used this method as the basis for our computation of lost goodwill. A brief summary of our computation follows. For a more technical explanation of our application of this method, see Note 4 on page 8.

Our computation is made as of December 31, 1972, and is based on the earnings of the most recent year. We have basically considered the loss of the asset, goodwill, to the business as of that date as if a valuation were made for the sale of each concern. The reason we have used the most recent year's results rather than an average of prior years, is that in this particular case, a potential purchaser would evaluate the *current degree of recovery* from prior losses. The use of 3 to 5 years prior earnings average would tend to overstate the amount of goodwill lost and would also result in a loss of goodwill for many businesses which have fully recovered per Dr. Oliver's computations.

Recovery from the boycott impact, according to Dr. Oliver, is evidenced by the crossing of the actual sales line above the "trend line" in any year after the initial boycott impact in 1966. For example, in the case of Hudson on page 34, actual sales exceed "trend line sales" for the year 1972. Therefore, according to Dr. Oliver, Hudson has recovered from the boycott impact, and no loss of goodwill can be determined in his case (See page 39).

Since earnings lost in the year 1972 resulted from unfavorable external events, they were, therefore, a loss of return on the intangible asset of goodwill, (i.e., satisfactory customer relations, etc.). We have, therefore, capitalized the amount of earnings lost in 1972 at 15%, the rate of expected return from intangible assets as set forth in Revenue Ruling 68-609 for businesses with a relatively small risk factor and stable earnings. The resulting amount is the lost goodwill as measured at 12/31/72. (See the computation for McDaniel on page 30).

As we understand the exhibits and testimony of the accountants they did not employ the method set forth in their transmittal letter. We fail to find that the accountants computed the percentage return on the tangible assets of the businesses involved in this case and deducted this amount from net earnings. We also note that Revenue Ruling 68-609 requires sole proprietorships or partnerships to deduct from earnings a reasonable amount for services performed by the owners or partners engaged in the business. This was not done.

Failure to compute good will properly resulted in an overvaluation of good will. For example, Barbara B. Ellis and Norman N. Ellis, doing business as Ellis Variety Store, were awarded $96,633 for loss of good will. The income tax returns for these complainants show a beginning inventory for the years 1960-68 as follows:

1960	$7,058.27
1961	4,774.15
1962	3,174.08
1963	4,595.96
1964	6,146.34
1965	7,659.26
1966	8,479.32
1967	6,794.19
1968	9,998.93

The tax return for 1968 also showed other tangible assets used in the business amounted to $3,000. Adding these tangible assets to the beginning inventory for 1968 makes a total of $12,998.93 of tangible assets used in the business. An allowance of $96,633 damages for loss of good will is a gross overvaluation of good will.

We reverse the allowance for loss of good will to each complainant and remand for further evidence on loss of good will. On retrial the court should determine whether a business should be permitted to recover profits on lost sales plus loss of good will. It appears to us there is a strong probability that allowing recovery of profits on lost sales plus loss of good will would pyramid damages and amount to double recovery. We express no opinion on this question but expert testimony should deal with the question on retrial.

We are satisfied that complainants suffered some damages resulting from the boycott but are of the opinion that the amount allowed was excessive under the evidence presented.

We hold the chancellor erred in failing to reduce the award of damages to complainants McDaniel, Norman N. Ellis and Barbara B. Ellis for the amount earned by them while they were out of business. *Southern Christian Leadership Conference, Inc. v. A. G. Corp.*, 241 So.2d 619 (Miss. 1970).

Complainants were under a duty to mitigate damages and any award made to complainants shall be reduced by their earnings.

AFFIRMED IN PART AND REVERSED AND RENDERED IN PART ON LIABILITY; REVERSED AND RENDERED IN PART ON DAMAGES; REVERSED AND REMANDED IN PART ON DAMAGES.

PATTERSON, C. J., SMITH and ROBERTSON, P. JJ., and SUGG, WALKER, BROOM, LEE and BOWLING, JJ., concur.

APPENDIX B

IN THE CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

No. 78,353

CLAIBORNE HARDWARE COMPANY, *et al.*
Complainants

VS.

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*
Defendants

[Filed Aug. 9, 1976]

OPINION OF THE COURT

This cause was commenced in this court as an attachment in chancery. The bill of complaint also seeks injunctive relief. Twenty-four complainants, both individual and corporate, all of whom reside or are domiciled in Claiborne County, Mississippi, brought this action against the National Association for the Advancement of Colored People (NAACP), a New York corporation authorized to carry on its activities in Mississippi, Mississippi Action for Progress, Inc. (MAP), a Mississippi corporation, and 146 individual defendants. Fifty-five banks within this state were made attachment defendants. Answers filed by eleven banks reported a total of $16,831.67 in their hands belonging to the NAACP. Sixteen of the attachment defendants did not file answers. The remaining twenty-eight banks filed answers showing no funds of the NAACP in their possession.

THE PROCEDURAL BACKGROUND

This lengthy procedure began on October 31, 1969, when the bill of complainant was filed in this court. One week later (November 7, 1969) Aaron Henry, one of the individual defendants, filed a complaint in the United States Court for the Northern District of Mississippi, at Clarksdale, against three Clarksdale banks seeking an injunction against the detention of funds arising from the attachment process of this court.[1] The federal court ordered the state court complainants to be made parties defendant and permitted the NAACP and MAP to intervene as plaintiffs. On June 10, 1970, the federal court enjoined the state court complainants from proceeding with their action in this court. On June 23, 1971, the United States Court of Appeals for the Fifth Circuit reversed the judgment of the district court, vacated the injunction, and remanded the cause with a directive to the district court to dismiss for lack of jurisdiction. On September 7, 1971, the Court of Appeals for the Fifth Circuit denied a petition for rehearing. On November 1, 1971, the plaintiffs, Henry, et al., petitioned the United States Supreme Court for a writ of certiorari. The Supreme Court denied certiorari in March, 1972. The Court of Appeals for the Fifth Circuit issued its mandate to the district court on April 4, 1972, and on June 14, 1972, the district court dismissed the complaint. The district court also refused to consider any issue of damages for the wrongful suit for injunction, holding that it had been found to be without jurisdiction in the matter.

Trial in this court began on June 11, 1973. The testimony of 144 witnesses was presented to this court. The

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[1] Aaron Henry, et al. v. First National Bank of Clarksdale, 444 F.2d 1300 (1971), cert den 405 U.S. 1019, 92 S. Ct. 1284, 31 L. Ed. 2d 483 (1972), reh den 406 U.S. 963, 92 S. Ct. 2057, 32 L. Ed. 2d 351 (1972).

trial lasted approximately eight months, after which the parties filed voluminous briefs. Several extensions of time for filing briefs were granted.

THE PLEADINGS

In the bill of complaint the complainants charged that beginning on or about April 1, 1966, and continuing daily thereafter, the principal defendants conspired to injure and ruin complainants' businesses. It was alleged that to carry out their illegal objectives the defendants employed injurious falsehoods, deception, force, intimidation, threats, coercion and violence against customers and prospective customers of complainants, and thereby brought about an effective and injurious common-law secondary boycott; that the principal defendants utilized mass picketing, made public speeches, stationed guards in the vicinity of complainants' business houses, physically attacked complainants' patrons and obstructed the entrances of their stores, preventing customers from entering and trading; and that they threatened, coerced and abused complainants' customers and prospective customers, using demeaning, offensive and insulting language toward them, and destroyed their property.

The bill of complaint further alleged that all of the complainants were caused to suffer great and irreparable harm, loss and damages because of the acts of the principal defendants. The complainants charged the principal defendants, individually and collectively, with the tortious interference with their rights to pursue a lawful trade and business; with restraining trade in Claiborne County in violation of Sections 1088, 1089 and 1092 of the Mississippi Code of 1942 (Secs. 75-21-1, 75-21-3, and 75-2-9, Miss. Code 1972). Complainants asked attachment of funds of the defendant NAACP, pursuant to Section 2729, et seq., Miss. Code 1942 (Sec. 11-3-1, et seq., Miss. Code 1972). Various banks were named

as having in their possession funds of the NAACP, a nonresident corporation.

The bill of complaint asked that the principal defendants be enjoined from: (1) picketing the premises of the various white-owned business establishments; (2) stationing guards in the vicinity of such businesses; (3) soliciting, threatening, coercing or restraining any person from trading with complainants; (4) continuing with the secondary boycott; (5) asking others to cease doing business with the complainants; and (6) restraining trade in violation of the laws of this State. The complainants asked damages against the defendants in the total sum of $3,542,466.06, jointly and severally; and prayed that damages, penalties and attorneys' fees be awarded each of the complainants, together with general and special relief.

On April 30, 1970, Harold J. Barkley, Jr. moved the Court for authority to intervene as a complainant, as the trustee in bankruptcy in the matter of Radford S. Jones, d/b/a "Jones' Five 'n' Ten Store." There was no objection and the Court entered its order sustaining the motion. No evidence was presented at the hearing to support the allegations of intervention and this intervenor was dismissed.

On December 27, 1969, the NAACP filed a general and a special demurrer alleging that the demands of the bill of complainant were unconstitutional because they are violative of the rights of defendants under the First and Fourteenth Amendments of the Constitution of the United States. All of the individual defendants joined in these demurrers, with the exception of the defendant Rev. Dominic Cangemi who joined in the special demurrer, only. The Court overruled the demurrers.

On February 23, 1970, defendant NAACP filed a motion for a bill of particulars. The individual defendants joined in this motion. Defendant MAP filed

its own "Motion and Affidavit for Bill of Particulars." The Court directed complainants to furnish the bill of particulars.

Defendant NAACP answered the bill on June 8, 1970, admitting that it was a New York corporation authorized to do and doing business in the State of Mississippi, and that it had funds in the First National Bank of Jackson, Mississippi. It denied the other allegations of the bill of complainant. It filed a cross-bill in which it prayed for actual and punitive damages in the sum of $1,000,000.00. On June 8, 1970, the individual defendants, except Rev. Dominic Cangemi, filed their answer and cross-bill. They asked that each individual defendant be awarded $160,000.00 as damages, except defendants Evers, Ross, Collins, Martin, Smith, Lightfoot, Wyatt, Allen and Thompson, for whom the sum of $250,000.00 each was asked.

On June 8, 1970, the defendant MAP mailed to the Clerk of this Court, with copies to all counsel, its separate answer, wherein it denied all of the allegations of the bill of complainant and the bill of particulars, except the allegations relating to its purposes, identity, domicile, etc., which were admitted.

MAP set out affirmative matter in its answer to the effect that it was a part of a federal program to eliminate poverty and to provide a means for low-income persons to participate in that program.

FACTS IN THE RECORD

At the threshold, this Court accords judicial notice to the Mississippi Statistical Abstract (1971), prepared by the College of Business and Industry of Mississippi State University, and the Mississippi Official and Statistical Register, compiled by the Secretary of State, for the purpose of comparative statistics relative to the white-to-black ratio of population in Claiborne County,

Mississippi, and in the United States and the State of Mississippi as a whole. Since this case, most unfortunately, has a racial background, this comparison is highly important. In the decade commencing in 1960 the United States were comprised of 88.8 per cent white and 10.6 per cent black (with "other" races comprising .6 per cent). At that time the State of Mississippi had a total population of 2,178,141, of which 57.7 per cent were white and 42 per cent were black (with "other" races comprising the fraction of one per cent remainder). However, in Claiborne County, Mississippi, of the total population of 10,900 persons, only 2,500 were white; thus, the ratio was approximately 76 per cent non-white to 24 per cent white. It follows that the white merchants of Claiborne County were highly susceptible to economic ruin when faced with a boycott (or "selective buying campaign") against them by over three-fourths of the population of the county.

It is a historical and undeniable fact that whites had exercised complete control of government at all levels in the State of Mississippi from the time this area became a part of the United States and until the time of the occurrences herein, with the possible exception of a relatively short period immediately following the American Civil War. Claiborne County was no exception, although its population was comprised of less than one-fourth white people. It was precisely because of such conditions in Mississippi and several other states that Congress was prompted to enact the Voting Rights Act of 1965. That Act was the law at the time the boycott sponsored by the NAACP was instigated (i.e., on April 1, 1966). The evidence adduced at the hearing showed that blacks had no difficulty in becoming registered voters of Claiborne County under the terms of the Act. As a matter of fact, the preamble to the list of "demands" precipitating the boycott (which will be discussed further *infra*) contains this paragraph:

> *"Because Negroes now constitute a majority of the registered voters in Port Gibson and Claiborne County,* it is obvious that Negroes will have a powerful voice in the future affairs of the City and County." (Emphasis added).

The demands of the blacks were principally addressed to governmental changes. In the year 1967 a general election was to be held. It was entirely within the grasp of this three-fourths black majority to elect whomever they desired to fill all county and municipal offices and thereby effectuate whatever changes or reforms they saw fit and proper without the necessity of rancor, ill-will, threats, violence, or the visitation of economic ruin on the white merchants of the area.

The county seat and largest municipality in Claiborne County is the City of Port Gibson. In the latter part of the year 1965, a group of black leaders in Port Gibson and other areas of Claiborne County formed a "Human Relations Committee." This committee was comprised of twelve blacks, one of them an educator, three of them businessmen, and eight of them Christian ministers. This group presented a petition containing thirteen demands to the Port Gibson Chamber of Commerce. These demands were overwhelmingly of a public and governmental nature, and were beyond the power of the Chamber of Commerce to grant. It is apparent that the petition should have been presented to the governing authorities for redress of any grievances.

In late 1965 or early 1966 the NAACP began organizing a chapter in Claiborne County. The dominant figure in this effort was Charles Evers, the Field Secretary of the NAACP in Mississippi. Organizational meetings were held in the First Baptist Church in Port Gibson. Upon completion of the organization, the Reverend James N. Dorsey, the pastor of the church, was elected as the first president of the Claiborne County

Branch of the NAACP (Claiborne NAACP). Thereafter, regular meetings were held each Tuesday evening at the First Baptist Church of Port Gibson.

The petition of the Human Relations Committee was considered by the Claiborne NAACP, and was deemed insufficient by Charles Evers and the other leaders of the organization. On March 14, 1966, a new set of "immediate needs," in letter form, was addressed to: The Mayor and Board of Aldermen (of Port Gibson), the Claiborne County Board of Supervisors and Board of Education, and Sheriff Dan S. McKay (Sheriff of Claiborne County). Apparently it was delivered to the officials to whom it was addressed on March 17, 1966. This letter is highly important in this case, and is here set out in its entirety as follows (except for date and addressees set out above):

"Gentlemen:

"This letter is addressed to you as elected officials and as leaders in business, religious and civic affairs. We hope you will communicate its contents to other citizens of the county and city also.

"We plan to make this letter public by release to the press so that the issues may be aired thoroughly and so that everyone may contribute to the solution of difficulties in Port Gibson and Claiborne County.

"Because Negroes now constitute a majority of the registered voters in Port Gibson and Claiborne County, it is obvious that Negroes will have a powerful voice in the future affairs of the City and County.

"But progress in inter-racial cooperation cannot wait for elections of the future, since all citizens now are entitled to free exercise of their rights to public accommodations, public facilities, public services and entry into hospitals, schools, recreational

facilities, etc., protection of the law, participation in the election machiner (sic), service as jurors and all other rights which are ours by law, logic and American ethic.

"We hope it will not be necessary to resort to the kind of peaceful demonstrations and selective buying campaigns which have had to be used in other communities. It takes manpower, time and energy which could be better directed at solving these problems which exist in Port Gibson and Claiborne County by mutual cooperation and efforts at tolerant understanding.

"No one likes to have to resort to picketing and other kinds of demonstration—just as no one likes to be the target of this kind of demonstration. But this sort of thing is inevitable unless there can be real progress toward giving all citizens their equal rights. There seems sometimes to be no other alternative.

"Objectives of Negro citizens of Port Gibson and Claiborne County are, simply put, to have equality of opportunity, in every aspect of life, and to end the white supremacy which has pervaded community life. This implies many long-range objectives such as participation in decision-making at every level of community, civic, business and political affairs.

"The following are immediate needs, which should be met without delay so that all of us, white and Negro, may progress together and so that we may meet other community problems together as they arrive in the future.

"1. A community affairs committee, made up of both races, needs to be officially constituted by the Mayor and Board of Aldermen, the Board of Supervisors and the

undersigned, so that future problems may be anticipated and solved before they reach a breaking point.

"2. All public schools of Claiborne County and Port Gibson should be desegregated, both (sic) faculty, staff and student body this coming September, 1966.

"3. Three Negro policemen should be employed in Port Gibson so that there will be impartial enforcement of the laws. The Negro policemen should be assigned to work with the white policemen on an integrated basis, with power to arrest any lawbreaker.

"4. (Omitted. See letter of March 23, 1966, *infra*).

"5. (Omitted. See letter of March 23, 1966, *infra*).

"6. Negroes should be employed in the welfare office so that the County may demonstrate its good faith and impartiality.

"7. All business houses in the county should comply with the spirit and letter of the Civil Rights Act of 1964 by treating all customers alike and according them the use of all facilities.

"8. Verbal or physical abuse of citizens by law enforcement officers must cease and Negroes are not to be addressed by terms as 'boy,' 'girl,' 'shine,' 'uncle,' or any other offensive term, but as "Mr.,' 'Mrs,' or 'Miss,' as is the case with other citizens.

"9. Crossing guards are to be posted at all schools, not just the white schools.

"10. All funeral (sic) shall be accorded police escort.

"11. Negroes should be named to the Board of Education. And they should be Negroes satisfactory to Negro leadership.

"12. Public improvements should (sic) as roads, street (sic), lights and sewer system are most needed in predominately (sic) Negro residential areas now because of past neglect. A program for remedying this situation should be embarked on immediately.

"13. The Mayor, Board of Aldermen, County officials, businessmen and church leaders should denounce all extreme groups.

"14. The courtroom and all other public facilities are to be desegregated immediately by order of the proper officials, recreational and other public-owned facilities.

"15. Immediate steps must be taken to insure the selection of Negroes for jury duty in as close a relationship to the population breakdown as possible.

"16. Provision must be made for the use of Negroes as election officials and for all other public duties.

"17. Official and semi-official boards and commissions, now and in the future, must include appropriate numbers of Negro citizens.

"18. The immediate desegregation of the Claiborne County Hospital, staff and patients.

"19. Bus stations must be integrated so that Negroes may be able to use all facilities.

"20. All snack bars should be removed from classrooms.

"21. Salesmen should be bared (sic) from entering classrooms interrupting classes.

"Please communicate with the undersigned so that we may arrange a meeting to discuss the details of solutions to these problems.

"Very truly yours,

(Signed)

"Calvin C. Williams, Chairman

"Alexander Collins, Sec.

"James N. Dorsey

"Floyd D. Rollins

"Nathaniel H. Jones

"Walter L. Griffin Sr.

"Mack Tisdale"

It must be observed that these objectives are laudable, commendable and highly praiseworthy for the most part. The purpose was to gain equal rights and opportunities for Negro citizens. The fallacy, of course, was the veiled threat of a "selective buying campaign" directed against the business community unless the addressees, that is to say, the public officials, acceded to these "immediate needs." The merchants in Port Gibson and Claiborne County, although having the possibility or onus of "demonstrations and selective buying campaigns which have had to be used in other communities" cast upon them, nevertheless had no power whatever to grant

any of these requests or demands of a public or governmental nature.

It will be noted that demands (or "immediate needs") 4 and 5 were omitted from the letter of March 14, 1966. Under date of March 23, 1966, the following letter was written:

"March 23, 1966

"Mayor and Board of Aldermen

"Claiborne County Board of Supervisors and Board of Education

"Chamber of Commerce

"Sheriff Dan S. McKay

"Port Gibson, Mississippi

"Gentlemen:

"We are submitting the fourth and fifth items that were off the pertition (sic) that was presented March 17, 1966.

"4. All stores must employ Negro clerks and cashiers.

"A. Two or more deputy sheriffs must be hired.

"B. The city limits be extended to include Thompson Sub Division (sic), and all other areas where there is a concentrated group of citizens of Port Gibson.

"C. A strong housing code should be adopted and enforced.

"D. The teacher's (sic) lounge should be restored for teachers use rather than a centralize (sic) area for selling.

"5. That a Negro County Agent be employed, since there is (sic) more than 8,239 Negroes in Claiborne County.

"A. That a full time home demonstration agent be employed to assist the farm women and young ladies to become effective Homemakers, including planning, feeding, and caring for the farm families.

"We shall be awaiting your answer by April 1, 1966.

"Very Truly yours,

(Signed)

"C. C. Williams

"Alexander Collins

"Walter L. Griffin Sr.

"Nathaniel H. Jones

"Rev. Mack Tisdale

"F. D. Rollins

"James N. Dorsey

"Charles Evers"

It will be noted that one addressee was added in this letter, i. e. the Chamber of Commerce. Further, this letter contained one additional signature, that of Charles Evers.

Although there was no reference to any initiating group or organization in either of these letters, the testimony at the hearing clearly established that the persons whose signatures appear thereon were selected by the Claiborne NAACP, as its representatives. Nathaniel H.

Jones, a member of this committee, testified that the committee was appointed by the "Board of the NAACP" and by certain concerned black people. He said that the list of demands was "mostly prepared at Mr. Collins' barber shop" (having reference to Alexander Collins, a member of the Claiborne NAACP, who was selected as the Secretary of the committee). He further testified that the list of grievances, or demands, dated March 14, 1966, was presented for approval at the Claiborne NAACP meeting held on the first Tuesday evening in March, 1966, by James N. Dorsey, President, and that the list was read to the meeting by Dorothy Brandon, Claiborne NAACP Secretary, and that the approximately 500 people present voted their approval unanimously. Other testimony in the record bears out Jones' testimony. Walter Griffin, Sr., another member of the committee, testified concerning the addenda prepared on March 23, 1966; he said that the committee discussed these demands with Charles Evers, and that he signed it at a Tuesday evening meeting of the Claiborne NAACP.

The deadline for action to be taken by the Mayor and Board of Aldermen of Port Gibson, the Claiborne County Board of Supervisors, the Claiborne County Board of Education, the Port Gibson Chamber of Commerce, and Sheriff Dan S. McKay was April 1, 1966.

No favorable answer was forthcoming from the addressees on April 1, 1966. The Claiborne NAACP held a meeting that morning at the First Baptist Church, under the leadership of the national NAACP Field Secretary for Mississippi, Charles Evers. Several hundred black people attended the meeting, and the purpose was to decide what action should be taken relative to the twenty-one demands. Speeches were made by Evers and others, and a vote was taken. It was the unanimous vote of those present, without dissent, to place a boycott on the white merchants of Port Gibson and Claiborne County.

Although the white merchants were not addressees of the aforesaid demands, nevertheless the direct action of this group of black people was aimed at them. The purpose was to coerce them to bring pressure to bear on the municipal and county governments so that the demands would be satisfied. The alternative was economic ruin. This was an established tactic of the NAACP. The testimony of many of the defendants clearly shows this purpose. For example: Nathaniel Jones, one of the committeemen who signed the demand letters, said under oath that the blacks involved "expected white business people to put pressure on the Board of Aldermen and the Board of Supervisors to grant the demands;" he further said it was all right for blacks to buy from white merchants "as long as they are not in Claiborne County." Walter Griffin, Sr., another of the signers, testified that it was the intention to picket the white merchants if the public officials didn't grant the demands; and this man's testimony showed that this plan was a preconceived thing, even before the April 1, 1966, meeting was held. He also testified that the purpose of the boycott was to force the white merchants to bring pressure to bear on the public officials so that the demands would be met. Geneva Collins, one of the defendants, who was elected as Chancery Clerk of Claiborne County in 1967, and who is the wife of Alexander Collins, secretary of the NAACP-appointed committee, testified that the white merchants, perhaps, "could have some influence" in seeing that the demands were met, and that the boycott was placed on them for that reason. James Whitney, a defendant who testified that he was one of the "store watchers" about whom more will be said later, said that to him a boycott means to "demand someone to do something you want done," and he further said that the reason for the boycott was because the twenty-one demands were not met, and they expected the white merchants to go to the public authorities and get them to grant the

demands. Charles Evers, unquestionably the leader of this endeavor in his capacity as the Field Secretary of the NAACP in Mississippi, testified that the demands were almost identical to those made in Fayette (Jefferson County) and Natchez (Adams County), Mississippi, which resulted in NAACP-sponsored boycotts. Evers proclaimed in his testimony that "I am the best thing that ever happened to them (black people);" he said his actions were aimed at "mean, racist white folks;" he said the white merchants could exert influence on the public officials, and that "power in the community was the business man, no question about that." It would be redundant and superfluous to recount all of the testimony given by NAACP members in this regard. It was amply shown by the testimony that the purpose was simply to bring financial ruin to the white merchants unless they forced the local governmental officials to grant those demands.

Evers made a speech to several hundred black people from the steps of the Claiborne County Courthouse in Port Gibson on April 1, 1966. The boycott began immediately thereafter.

Early in the boycott the NAACP designated a group of young black males as "store watchers" or "enforcers." In his speech of April 1, 1966, Evers told his audience that they would be watched and that the blacks who traded with white merchants would be *answerable to him.* According to Sheriff Dan McKay,[2] who was present

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[2] Sheriff Dan McKay is a Caucasian. It is most noteworthy that even though he had a black opponent in the election for Sheriff of Claiborne County in 1971, and even though the electorate was overwhelmingly black, he was elected. He had served as Sheriff from 1964 to 1968, and in the general elections of 1967 his wife was elected as Sheriff although she had black opposition and although black voters far outnumbered white voters. From 1968 to 1972, he served as his wife's chief deputy. It is most apparent that this man was trusted by the black people of the

during the speech, Evers told the assembled black people that any "uncle toms" who broke the boycott would "have their necks broken" by their own people. Evers' remarks were directed to all 8,000-plus black residents of Claiborne County, and not merely the relatively few members of the Claiborne NAACP. The evidence shows that the presence of "store watchers" or "enforcers" in the vicinity of the white merchants' business houses was highly effective as a deterrent to black patronage of those merchants.

The individual defendants who were members of the NAACP, and who testified, approved of the demands made upon the public officials, and the evidence shows that they agreed to, and did participate in, the boycott by withdrawing and withholding their trade and patronage from the white merchants. However, none of these witnesses testified that he or she had a personal dispute with any white merchant in Claiborne County. None of these witnesses testified that he or she ever asked for or sought a job from any white merchant; nor did any of these witnesses represent any other black person who was seeking a job.

On the afternoon of the day the boycott began, i. e., on April 1, 1966, the NAACP staged the first of a great number of marches and demonstrations through the business district of Port Gibson to inform the white merchants and other white citizens, as well as all black members of the community, that the NAACP had called upon the Negro citizens to withdraw and withhold all trade from the white merchants. After the initial march, pickets carrying signs walked along the sidewalks in front of the white business houses. Periodic marches and speeches continued in Port Gibson. Pickets were often present in the vicinity of white-owned stores on

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county, and that they had faith in his fairness. The court must take the position that his testimony was unbiased and accurate.

the outskirts of Port Gibson. The legend on the signs carried by them advised that the NAACP had Port Gibson under boycott. Although less frequent, there was marching and picketing in the small Claiborne County communities of Hermanville and Pattison.

The "store watchers" or "enforcers" on occasion physically stopped and blocked black customers and instructed them not to trade with white merchants. Black people were threatened with physical violence, and threatening and abusive telephone calls were made to blacks who were seen trading with white merchants. Some blacks were physically assaulted for continuing to trade with white merchants after being warned. Personal property purchased in white-owned stores by blacks was taken from them and destroyed. On at least two occasions gunshots were fired into the houses of black people who continued to trade with white-owned business establishments.

The names of black citizens who were seen trading with whites were read out at NAACP meetings, and these names were published in a mimeographed tabloid called the "Black Times." They were branded as traitors to the black cause, called demeaning names, and socially ostracized for merely trading with whites.

In July, 1966, a group of young black men organized a militant unit called the "Deacons" or "Black Hats." They armed themselves and purchased radio transmitters and receivers ("walkie-talkies") for automobile and foot patrol. They used this radio equipment to communicate with each other in surveillance of the white business houses. There is contradictory evidence as to whether or not this unit openly engaged in military drills, but the minutes of the organization showed that they carried weapons, purchased ammunition, and engaged in practice-shooting on a target range south of Port Gibson. The minutes showed that the membership of the "Deacons" or "Black Hats" was comprised of the following:

Atlas, Alonzo	Henry, Roosevelt	Scott, Elmo
Atlas, Morris	Johnson, Lewis	Scott, James
Anderson, Roosevelt	Johnson, Hugh	Shields, Rudolph
Bailey, Calvin	Jenkins, George	Shorter, Willie
Barnes, Timothy	Jones, Ernest	Smith, Bill B.
Booker, John	Jones, Nathaniel	Thomas, Merritt
Butler, Robert	Kilcrease, Melvin	Trevillion, Jody
Davis, Alfred	Lipscomb, Carl	Walker, George
Ellis, Jimmy	Lipscomb, Charles	Warner, Julius
Goldsberry, James	Minor, Nathaniel	Whitney, James
Greer, James	Noble, Phenix	Wilson, Walter
Grove, Charles	Odom, James	Wilson, Leonard
Gusta, Andrew	Porter, Frank	Wood, Bobby
Harris, Robert	Rice, Lawrence	Miller, Charlie

The "prime mover" of this group was Rudolph Shields, who came to this area of Mississippi from Chicago. Shields said that the organization was for the purpose of "frightening the Klan" and to protect blacks. The evidence is silent as to whether a unit of the Ku Klux Klan even existed in Claiborne County. But it is clear that this group of "Deacons" or "Black Hats" was a cause of pervasive fear among black citizens of Claiborne County, at least to the extent of preventing trade with white businesses.

Some time in the month of September, 1966, in Yazoo City, Mississippi, Owen Cooper, LeRoy Percy, and Hodding Carter, III, met and resolved to secure a charter from the State of Mississippi for a corporation called "Mississippi Action for Progress, Inc." (MAP). The purpose of MAP was to develop a community action program in twenty counties within the state "to eliminate the paradox of poverty." The charter of incorporation was approved on September 13, 1966.

Claiborne is one of the twenty counties in which MAP operates. Many of the leaders of the NAACP and the

boycott were initially employed by, or served on advisory boards of, MAP in its Claiborne County operations. Calvin Williams, secretary of the NAACP committee that prepared and submitted the demands on the public officials, and who was one of the black leaders in the boycott of the white merchants, became the chief executive officer of the MAP operation in the area encompassing Claiborne County.

The executive director of MAP, Walter D. Smith, advised against the employment of Calvin Williams because of his leadership activities in the Claiborne County boycott. This advice was disregarded.

Complaints were lodged with MAP officials concerning the activities of MAP employees in Claiborne County in behalf of the NAACP-sponsored boycott, but apparently those complaints were ignored.

On January 25, 1967, the MAP Board of Directors held a special meeting in Jackson. Among the matters coming before that meeting was the effect of the boycott on MAP's Claiborne County operation. The purchase of food for the feeding of children at the Head Start Centers in Claiborne County was discussed. Price, a white person and assistant nutritionist, reported the attempt to formulate a plan to purchase food from both white and black merchants in Claiborne County. Walter D. Smith listed the four white-owned stores selected as: Piggly-Wiggly, M & M Grocery, Jitney Jungle, and Ellis Grocery; and the four black-owned stores selected as: Lee's Grocery, Ross's Grocery, Wyatt's Store, and Parker's Store.

Directors of MAP made a telephone call to Charles Evers, who, as mentioned herein above, was at that time serving as the Field Secretary of the NAACP in Mississippi, to attempt to get an agreement to the proposed "revolving plan" for food purchases in Claiborne County. Evers was adamant in his objection to the plan, and

MAP was unable to reach an agreement with him. Evers' own testimony substantiates this. He said, "We threatened to run them out of there," (speaking of MAP when he found out that groceries were being purchased from white merchants for the children in the Head Start Program). He (Evers) said he called MAP headquarters and strenuously objected; he said he told them that *if they were going to spend federal funds with whites they (the NAACP) had rather not have the MAP program.*

At the regular meeting of the MAP Board of Directors held in Jackson on February 16, 1967, Walter D. Smith, on that date MAP's executive director, made a report on the Claiborne County problem. He reported that on January 26, newspapers had published articles to the effect that the NAACP had lifted its boycott of the white merchants. Price, MAP's assistant nutritionist, met with the Reverend James N. Dorsey, President of the Claiborne NAACP, in Port Gibson on Friday, January 27, 1967. Price and Dorsey worked out a "revolving plan" whereby food for the Head Start Program would be purchased alternately from both white-owned and black-owned stores. This plan was considered by MAP to be satisfactory until it was discovered that although some white businesses had been released from the boycott by the NAACP, the white stores involved in the "revolving plan" had not been so released and were still under the boycott.

In the following week, MAP was informed that the cooks at the Head Start Centers in Claiborne County were afraid to go into the white-owned stores; they were fearful of being subjected to violence. However, during the course of the trial, the only Head Start cooks called to the witness stand testified that they refused to go into white-owned stores to purchase groceries for the children in the program *for the reason that they were in favor of the boycott and wanted to honor it.*

The MAP Board of Directors did not seek help from local law-enforcement officers, nor did they complain to United States authorities for protection of their cooks from possible reprisals arising from trade with the white merchants. They most apparently decided to go along with Evers' demands. They simply adopted a policy to cease all trading with white merchants in Claiborne County, and directed the Head Start officials to purchase food *only from black-owned stores.* MAP specified that if the black merchants were unable to supply the Head Start Centers with necessary merchandise, *then the needed items should be purchased from merchants outside Claiborne County.* In other words, MAP joined the boycott against the white-owned businesses and aided and abetted the NAACP in its avowed purpose of coercing the white merchants to force the governing authorities to grant their demands or face economic disaster. In fact, MAP was continuing that practice at the time of the trial of this cause.

MAP attorneys Eddie H. Tucker and Francis B. Stevens, by letter dated February 16, 1967, advised Walter D. Smith that based on a ruling by General Counsel of the OEO, MAP was not a Community Action Agency, but instead was a "single purpose grantee," i. e., a private agency, as opposed to a public agency, and that as a result the Hatch Act had only limited application regarding MAP employees. Messrs. Tucker and Stevens advised, however, that MAP's programs were not to be carried out in a manner supporting or identifying with partisan political activities.

MAP employees in Claiborne County continued to take an active part in the NAACP activities and to support the boycott by picketing and marching.

The Reverend R. L. T. Smith, Sr., a black Christian minister, was an officer and director of MAP. It was he who made the motion which unanimously carried at

the MAP board meeting of February 16, 1967, whereby the Head Start program was restricted to food purchases from black-owned stores, only. He also owned the largest number of shares in, and was a director of, "Our Mart, Inc.", a black-owned retail business organized about two weeks later in Port Gibson, which will be more fully discussed hereinafter. Morris K. Lewis, the executive director of MAP at the time of trial, was the auditor of Our Mart, Inc., and attended its board meetings and gave financial advice to this business. The manager of Our Mart, Inc., Nathaniel Jones [3], and others, were permitted to use the WATS telephone line paid for by MAP to secure business advice from Lewis.

On February 1, 1967, the mayor and board of aldermen employed William Holt as the first black policeman on the Port Gibson force. During the month of February, 1967, the boycott was lifted on some of the white merchants, viz.: Allen Motor Company, Segrest Service Station, Triangle Service Station, Port Gibson Service Station, McFatter's Drug Store, People's Clothing Store, Smith's Package Store, Jones' 5 & 10 Cent Store, Sherman Furniture Company, Patterson Furniture Company, H. Frishman Clothing Store, Easley Seed Store, and Standard Service Station.

On March 1, 1967, a certificate of incorporation was issued to Our Mart, Inc. This corporation was organized for the purpose of engaging in the wholesale and retail grocery and clothing business in Port Gibson. Defendant Marguerite Thompson initiated the organization of this business, and at the regular NAACP meetings she urged the members to purchase stock shares in this enterprise at $25.00 per share. Defendants Julia Jones, Bessie

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[3] Nathaniel Jones was also a member of the NAACP-appointed committee that submitted the twenty-one demands to the public officials. His signature appears on both of the documents comprising the demands.

Buck and Marguerite Thompson were the original directors. All of the stock was owned by black people, and all of its officers were black. The black citizens of Claiborne County were urged to do their trading with Our Mart, Inc.

With the boycott in progress, the evidence shows that Our Mart, Inc. became an instant success. Similar white businesses lost sales and profits during this period.

On April 4, 1967, Dr. Martin Luther King was murdered in Memphis, Tennessee. The utterly senseless and tragic killing of this nationally known and respected black leader had a depressing effect on the black community of Claiborne County, and was disruptive, to say the least, of whatever cordial relations remained between the black and white races. It is difficult for this court to understand how the white people of Claiborne County, Mississippi, could be deemed responsible in any sense for a barbaric murder in Memphis, Tennessee; nevertheless, the evidence shows that as a result of this unfortunate event the boycott aginst the white merchants of Port Gibson and Claiborne County was intensified or "tightened."

On April 8, 1967, the Trace Theatre in the business district of Port Gibson burned. During the summer of 1967, there were several other fires in and near Port Gibson.

In August, 1967, the regular quadrennial primary elections were held, with black candidates running for nomination for public office. In the general elections following, several black candidates were successful, including the defendant Geneva Collins, who was elected Chancery Clerk of Claiborne County.

Early on the evening of Friday, April 18, 1969, J. L. Wolf, the white assistant chief of police of Port Gibson, and Henery McQuein, a black policeman, went to the

home of Roosevelt "Dusty" Jackson, a young black man, to arrest him on the charge that he had interfered earlier in the day with a police officer who was attempting to arrest another black person. There were conflicting accounts of the events that occurred at Jackson's home. It was established, however, that some sort of struggle took place and that Jackson was shot and killed by Wolf.

A large crowd of black people gathered at the Jackson home. Apparently the crowd was not aware that Jackson was dead. His body was removed to a local hospital. A crowd of blacks then gathered at the hospital. When the crowd learned that Jackson was dead, it dispersed and later gathered at the First Baptist Church. NAACP leaders made speeches to the crowd.

As the night wore on, the situation in Port Gibson became tense. Violence became eminent when a black person threw an object of some sort at an automobile in which some white people were riding. At the request of the sheriff, a detachment of State Highway Patrol officers was sent to Port Gibson to augment the small group of law enforcement officers.

Shooting erupted at the church. A black man named Horace Lightfoot was beaten and had to be hospitalized. A State Highway Patrolman, Jim Taylor, was shot in the thigh. Another highway patrolman was hit in the face by a brick and had to have medical treatment. A black man named Tullos Brown was shot with a .22 caliber weapon.[4] When the situation was under control, sheriff's officers searched the blacks in the church and found no weapons; however, stashed in the church piano the officers found five handguns (one .32 caliber pistol and four .22 caliber pistols), two razors, and some pocket knives.

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[4] Officers of the Mississippi State Highway Patrol are armed with .357 Magnum revolvers. Apparently the bullet that wounded Brown came from another source during the melee.

On Saturday, April 19, 1969, the NAACP held a meeting at the church and then marched to the courthouse where Evers again spoke. Evers and other NAACP leaders called for the discharge of Wolf, McQuein, and the entire Port Gibson police force. When this demand was refused by the mayor and aldermen, the NAACP reimposed the boycott on all white merchants.

The situation was such that the mayor and board of aldermen put a dawn to dusk curfew into effect.

Aaron Henry, State NAACP President and a Director of the National NAACP, came to Port Gibson on Sunday, April 20, 1969, and spoke to a group of black people at Addison High School. He then joined local NAACP leaders in a protest march to the Jackson house. Henry sent a telegram to the Attorney General of the United States protesting Jackson's slaying.

On Monday, April 21, 1969, several hundred black people gathered at the home of Roosevelt Jackson. Charles Evers delivered an address from the front porch of the Jackson house. He called for an intensification of and a total and complete boycott of all white-owned business establishments in Claiborne County. The evidence shows that on this occasion he stated to the crowd: "If we catch any of you going in any of them racist stores, we're gonna break your damn neck."

In an obvious effort to cause the white merchants to bring pressure to bear on the mayor and board of aldermen to discharge Wolf and McQuein and, indeed, the entire Port Gibson police force, the NAACP intensified the boycott, together with marching, picketing and inflammatory speeches.

It was stipulated by respective counsel for the parties that defendant Addie Speed is a person non compos mentis and that defendants Ed Brandon, Ed Coleman, Jim Jones, Carrence Newsome, Floyd Rollins, Jim Smith,

Lawrence Speed, and Milton Trevillion had all died between the time of service of process in 1969 and the start of the trial in this court. They were all dismissed from the bill of complaint and the cross-bill by agreement. Defendants Maxine Brandon and Henry Hyder were minors at the time of the attempted service of process directly on them; by stipulation they were dismissed as defendants and cross-complainants. The Reverend Dominic Cangemi was also dismissed as a defendant and cross-complainant by agreement of counsel. Defendant James Mallory was dismissed by complainants when the court ruled that "Mallory" could not be changed to "Mallett" under the *idem sonans* rule. Therefore, the above named defendants will be dismissed as defendants and cross-complainants.

The evidence shows that the defendant Aaron Henry individually took no part in the secondary boycott of the complainants, engaged in no violence or threatening conduct toward anyone, joined no conspiracy as an individual to destroy the businesses of complainants, nor did he interfere with the businesses of the complainants except as a member of the board of directors of the defendant MAP. Therefore, the Court finds that the complainants failed to meet the burden of proof as to wrongdoing on the part of the defendant Aaron Henry, individually, and he will be, accordingly, dismissed as a defendant.

The Court finds that complainants met the burden of proof and established by an overwhelming preponderance of the evidence that the defendants set forth hereinbelow wrongfully combined and colluded in civil conspiracy, engaged in a secondary boycott against complainants, illegally created a monopoly, unlawfully interfered with the business relations of the complainants, and unlawfully conspired to and did destroy and damage the businesses of complainants, for which they are jointly and severally liable in damages and penalties:

1. National Association for the Advancement of Colored People;
2. Mississippi Action for Progress, Inc.;
3. Fred Allen;
4. Ike Allison;
5. Henry Anderson;
6. Alonzo Atlas;
7. Beatrice Atlas;
8. Calvin Bailey;
9. James Bailey;
10. McLawrence Bailey;
11. Joseph M. Barber;
12. Kenneth C. Barber;
13. Bill Beasley;
14. Helen Beasley;
15. Calvin Blackburn;
16. Marjorie W. Brandon;
17. Eli Brooks;
18. Priscilla Brooks;
19. Janie Brown;
20. Tullos Brown;
21. Eddie Burrell;
22. James Burrell;
23. Robert Butler, Jr.;
24. Arthur Lee Camphor;
25. Irma Rae Camphor;
26. W. E. Camphor;
27. Maggie Clark;
28. Alberta Coleman;
29. Charles Collier;
30. James Collier;
31. Alexander Collins;
32. Geneva Collins;
33. Scott Crowder;
34. Thelma Crowder;
35. Dan Currie (a/k/a Dan Curry);
36. Sarah Jane Currie (a/k/a Curry);

37. Charles Davis;
38. Mack Louis Davis;
39. Mary Ella Dee;
40. James Devoaual;
41. Alex Dorsey;
42. Sally Dorsey;
43. Geneva Durham;
44. Johnny Durham;
45. Mary Durham;
46. John Eggleston;
47. Harvey Ellis;
48. Jim Ellis, Jr.;
49. John Ellis;
50. Katie Ellis;
51. Rachael Ellis;
52. Charles Evers;
53. Ethel Graise;
54. James Gray;
55. Walter L. Griffin, Sr.;
56. Bernard Gusta;
57. Leesco Gusta (Guster);
58. Charlie Harris;
59. Cline Harvey;
60. Jim Holt;
61. Albert Jackson;
62. Willie Jackson;
63. E. J. Jennings;
64. Jesse Johnson;
65. Roscoe Johnson;
66. Julia Coleman Jones;
67. Lela Jones;
68. Marcus Jones;
69. Nathaniel H. Jones;
70. Samuel Jones, Jr.;
71. Bobby Kelly;
72. Bernice Lee;
73. Edward Lee;

74. Margaret Liggan (Liggins);
75. Horace Lightfoot;
76. Teddy Lipscomb;
77. Clarence Lucas;
78. Julia Lucas;
79. Nathaniel Martin;
80. Leander Monroe;
81. Johnny Moore;
82. Mary Lee Moore;
83. Willie V. Moore;
84. Ellis Neal;
85. Bessie Newman;
86. D. A. Newman;
87. Amos Newsome, Jr.;
88. James Odem;
89. Leona Owens;
90. Roosevelt Owens;
91. William Owens;
92. Henry Patton, Jr.;
93. Henry Otis Preston;
94. Evens Roberson;
95. Viola Robinson;
96. William (Willie) Robinson;
97. Mary Ross;
98. Odessa Ross;
99. William M. Matt Ross;
100. Elmo Scott;
101. Rudolph Shields;
102. Oliver Shinall;
103. Dora Shorter;
104. Roman Shorter;
105. Rosa Shorter;
106. Annie B. Smith;
107. Bilbo Smith;
108. Deloris Smith;
109. Leon Tarleton;
110. Ira Thomas;

111. Carl Thompson, Jr.;
112. Marguerite Thompson;
113. (Rev.) Mack Tisdale;
114. George Henry Walker;
115. Thelma K. Walker;
116. Eddie Walls;
117. Dessie Mae Walls;
118. Alex Warner;
119. Alonzo Warner;
120. Ethel Warner;
121. Albert Weathers;
122. Bome Wells;
123. Carl Lee Wells;
124. Eddie Lee Wells;
125. Katie Wells;
126. James Whitney;
127. Calvin Williams;
128. Ernestine Williams;
129. Aaron Wilson;
130. Gussie Pearl Wilson;
131. (Rev.) Willie Wilson;
132. Early Wren;
133. Ruby Wren;
134. Arthur Wyatt.

There is no issue of fact relative to the boycotting and picketing directed against the white merchants of Port Gibson and Claiborne County. The evidence is overwhelming that the primary dispute and controversy was between the public officials and the defendants. The testimony is without contradiction that the white merchants were conscripted in the controversy because the defendants believed them to be in a position of control or having the power to exert pressure to compel the public officials to grant the demands of the defendants. The only alternative was economic ruin. The overwhelming majority of the defendants called as adverse witnesses stated unequivocally that they had no dispute with

any white merchant. The overwhelming majority of the defense witnesses substantiated that the boycott tactic was utilized for the purpose of pressuring the white merchants to use their influence to persuade, or force, the municipal and county officials [5] to forthwith meet the demands of the defendants. The evidence is clear that the defendants engaged in a secondary boycott.

The evidence in the record is clear, and defendants have asserted in their post trial memorandum addressed to the court, that because the merchants placed under boycott were members of the Caucasian race, they were automatically and conclusively guilty of discrimination against the defendants and all black citizens of Claiborne County. Defendants contend that the boycott would have been avoided if the merchants had discussed the hiring of blacks. This assertion simply does not square with the record. Although some of the demands, e.g., Demand No. 4 in the demand letter of March 23, 1966 (i.e., "All stores must employ Negro clerks and cashiers"), standing alone, might avoid the aspects of a secondary boycott, nevertheless the principal thrust of the twenty-one demands is directed solely to the governing officials, and it was asserted throughout the trial that the primary purpose was to force the white merchants to bring pressure to bear on the public officials under threat of economic ruin. Those few demands made directly against the white merchants do not cleanse the defendants' actions of the taint of secondary boycott. Moreover, the evidence in the record shows that virtually all white merchants had black employees. But the hiring of black employees was no guarantee that the boycott would be lifted. For example, according to the testimony complainants Norman and Barbara Ellis hired a black em-

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[5] Including the Chancery Court of Claiborne County. See Demand No. 4(B) contained in the demand letter of March 23, 1966, *infra*. See also Sec. 3374-11, as amended, et seq., Miss. Code 1942 (Sec. 21-1-29, et seq., MCA 1972).

ployee as a clerk, but despite such action the boycott was placed on them and continued until they were forced out of business.

The record reveals that virtually none of the defendants took the trouble to determine whether the individual complainants employed black persons. Some of the defendants testified that they expected the complainants to discharge their white clerks and cashiers and hire blacks. They said they expected the white merchants to go so far as to discharge members of their own families and put blacks in their places as clerks and cashiers. Virtually every defendant testified that the blacks should continue the boycott until it was officially taken off by the NAACP.

It will be noted that at the time of Roosevelt Jackson's death, the boycott had been lifted as to certain of the white merchants. In his inflammatory speech regarding this episode, Evers again imposed the boycott on *all* white merchants, regardless of whether or not they were employing black persons, for the very apparent purpose of forcing the city authorities to fire Wolf and McQuein. The complainants had absolutely nothing to do with Jackson's death, but were threatened with financial ruin unless the municipal authorities granted the NAACP's demand in this connection.

The thread of fear and violence is woven throughout this case. Sheriff McKay testified that many times black people who wanted to trade with whites appealed to him for protection. He said at least 100 blacks complained to him that they had been interfered with when attempting to trade with white merchants. He said that when the "store watchers" relaxed the boycott would "loosen up," particularly on the outskirts of Port Gibson and in Hermanville and Pattison.

Very shortly after the boycott started, Sheriff McKay was near Hudson's Store when he noticed a group of

black people gathered around a car parked in front of the store. McKay approached the crowd and said he heard the defendant Calvin Williams tell a black man named Darden that he (Darden) could not go into the store because it was under boycott. McKay intervened, whereupon, he said, he heard Calvin Williams say to Darden: "You can go in, but the sheriff here isn't going to sleep with you at night." Darden did not go into the white store.

The atmosphere of fear that prevailed among blacks from 1966 until 1970 is strikingly revealed in the testimony of many of the witnesses.

James Gilmore, a black man, ignored the boycott. On the night of August 22, 1966, Gilmore's home was shot into. Elmo Scott, Jr., a member of the NAACP and of the "Deacons," together with two other young black men, Calvin Bailey and James Whitney, were arrested for this act and were convicted. The Mississippi Supreme Court reversed and remanded the case,[6] because of exclusion of Negroes from the grand jury. On retrial the jury was unable to agree. At the time of this trial, these people had not been arrested.

Defendant Rudolph J. (Rudy) Shields, formerly of Chicago, was the principal figure in several altercations. He boasted that he was "the most jailed person in the Claiborne County boycott." This man was the acknowledged leader of the "Deacons."

Laura Cullens testified that she lived about a quarter-mile from the city limits of Port Gibson on Highway 13. She refused to join the NAACP, and she ignored the boycott. Her name, among many others, was called out at the NAACP meetings, and she was derisively referred to as an "uncle tom." She was vilified and abused.

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[6] James Bernard Whitney, et al v. State, 205 So. 2d 284 (Miss. 1967).

In November, 1966, shotgun pellets were fired into her home.

Murriel Cullens, a son of Laura Cullens, did not observe the boycott and was the target of harrassment by blacks. Cullens' car was run into and badly damaged, and a brick was thrown through the windshield.

In April, 1966, soon after the boycott was started, Johnny Cox, a black man, and his wife were stopped by "store watchers" who attempted to prevent Mrs. Cox from going into the O.K. Cleaners, a white-owned business, to get some clothing. They had to get police protection in order to go into this cleaning establishment. About a week later, shotgun blasts were fired into the Cox home near Hermanville. Pistol shots were fired at Cox.

James Bailey, a 200-pound ex-football player, testified regarding his activities as a "store watcher." He was instructed to stop any black person he saw about to enter a white business house. He said that he had been a "bad boy" and had been convicted for molesting a child, resulting in sentence to the State Penitentiary. He was instructed to take the name of any black person going into a white-owned business, and report same to defendant Pete Gusta. On one occasion, he stopped Willie Butler, an elderly black female whom Bailey referred to as "Nig" Butler, as she was going into the Piggly-Wiggly store. Despite his warning, she went into the store and purchased some items of groceries. He watched her house and saw groceries delivered there by a white-owned store. He instructed her to stop trading with whites, whereupon she told him she would trade with whom she pleased. Bailey went into this elderly woman's yard and destroyed her flower garden by way of punishing her.

There is evidence in the record that an elderly black man called "Preacher" White (deceased at the time of

trial) was stripped of his clothing and whipped by a group of young blacks because he refused to honor the boycott.

Eddie Lewis, a black man, refused to join the NAACP and refused to honor the boycott. He was warned by Rudolph Shields to stay out of white-owned stores. Lewis purchased a bottle of whiskey at a white-owned liquor store, and was observed by Alfred Lee "Fats" Davis, an NAACP member and activist in the black boycott. Davis took the whiskey away from Lewis and denounced him in highly-uncomplimentary language for dealing with white people.

Willie Myles testified that he refused to stop trading with white stores. His name was read out at NAACP meetings as a "boycott breaker." He said he received threatening telephone calls. On one occasion, the Port Gibson police had to give him an escort when a carload of young blacks began following him. He received a warning that he was going to be whipped for buying gasoline at a white-owned service station.

Jasper Coleman, a black man, testified that he did not join the NAACP and continued to trade with white merchants after being warned by Walter Griffin and Calvin Bailey. The tires on Coleman's automobile were slashed.

Emerson Davis, a black commercial fisherman, testified that he refused to join the boycott. He testified that Rudolph Shields, Jimmy Ellis, and three other blacks grabbed him, carried him down a street and beat him. He was denounced as an "uncle tom." He said that he received threats on his life. James Bailey told him that he was going to kill him (Davis).

Unquestionably, the word "got around" in Fort Gibson and Claiborne County that physical harm, as well as vilification and ostracism, could very well be the lot of any black person observed trading with whites. As a matter

of fact, these things were promised by the Field Secretary of the National NAACP, Charles Evers, on at least two occasions, and it is apparent that the black people believed him. This NAACP-sponsored boycott was a definite success insofar as economic damage to the white merchants was concerned, even though the victims—the white merchants—had no power to grant the demands made on the county and municipal authorities.

The testimony revealed that the defendant NAACP provided attorneys to defend black persons arrested and charged with violating the laws of Mississippi in connection with acts arising from the boycott; and this nonresident corporation posted bail bonds and on occasion paid fines of black persons convicted of criminal charges.

APPLICATION OF THE LAW

Facts are set forth hereinabove which establish that on April 1, 1966, the NAACP and certain individuals, all of whom are members of the black race, entered into an agreement to withdraw and withhold their trade, and to induce all other members of the black race in Claiborne County to withdraw and withhold their trade, from the complainants, who are white individuals or corporations owned by white persons. The facts are beyond dispute that the purpose of the agreement was to interfere massively with the businesses of complainants and other white merchants of Claiborne County. Economic coercion by way of interjacence was the objective. These coercive efforts were designed and calculated to conscript the aid of the white merchants of Claiborne County by way of compelling them to influence, persuade, or force the public officials of Fort Gibson and Claiborne County to accede to the demands of the NAACP.

It is beyond dispute that the defendant MAP agreed to, and did, join with the NAACP and certain of the individual defendants in their plan of massive interference with

the businesses of complainants. Thereafter the officers and employees of MAP actively assisted the NAACP in carrying out the scheme of withholding business from all white merchants in Claiborne County.[7]

In carrying out the agreement and design, certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers. Intimidation, threats, social ostracism, vilification, and traduction were some of the devices used by the defendants to achieve the desired results. Most effective, also, was the stationing of guards ("enforcers," "deacons," or "black hats") in the vicinity of white-owned businesses. Unquestionably, the evidence shows that the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants.

The evidence in this record shows that no defendant had any direct or primary dispute or controversy with any complainant or other white merchant of Claiborne County, except perhaps a few of the defendant witnesses who said they simply did not like white people generally.

The evidence in the record clearly establishes that the defendants by their acts interfered with the right of each of the complainants to pursue a lawful business. The evidence also clearly establishes that the defendants combined to commit, and certain defendants acting for all did commit, overt acts which were injurious to the trade and business of the complainants; and by such acts the

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[7] The evidence clearly established that the Head Start Centers in Claiborne County were directed to trade exclusively with certain black-owned stores in the county; except in the event any needed items were unavailable at those stores, *they were under orders to leave Claiborne County to make such purchases so as to completely avoid trading with white merchants in Claiborne County.*

defendants hindered the sale and purchase of commodities in Claiborne County in violation of the laws of the State of Mississippi.

The evidence in the record clearly establishes that defendants engaged in a conspiracy.

A criminal or a civil conspiracy is a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself unlawful by criminal or unlawful means. 16 Am. Jur. 2d, Conspiracy, Sec. 43, p. 149. Our Court has defined a conspiracy as "a combination of persons to accomplish an unlawful purpose or a lawful purpose unlawfully." Mississippi Power & Light Company v. Town of Coldwater, 234 Miss. 615, 636, 106 So. 2d 375, 381 (1958); Southern Christian Leadership Conference, Inc., et al. v. A. G. Corporation, 241 So. 2d 619, 623 (Miss. 1970).

The difference between civil conspiracy and criminal conspiracy is that in criminal conspiracy the agreement or conspiracy is the gravamen of the offense, but in civil actions the conspiracy is not the gravamen of the charge, but the gravamen of the tort is the damage resulting to the complainant from any overt act done pursuant to the common design. 15A C.J.S., Conspiracy, Sec. 1 (1), pp. 596-598. The primary purpose of a civil conspiracy must be to cause injury to another. In a civil action the conspiratorial agreement need not be in any particular form, and need not extend to all the details of the conspiratorial scheme. In general, the essential elements required to establish a civil conspiracy are that there must be: (1) two or more persons, and for this purpose a corporation is a person; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as the proximate result thereof. *Id.* Sec. 1 (2), p. 599.

Under the laws of Mississippi, it is an unlawful conspiracy if two or more persons conspire to prevent another from exercising a lawful trade or calling, *or doing any other lawful act*, by force, threats, or intimidation; to interfere or threaten to interfere with the property belonging to or used by another, or with the use or employment thereof; to permit any act injurious to public morals, trade or commerce; to violate the laws of this state through force, violence, threats, intimidation, or otherwise; or to accomplish any unlawful purpose, or a lawful purpose by unlawful means. Section 97-1-1, MCA 1972.

The law permits great latitude in the admission of circumstantial evidence tending to establish a conspiracy, and to connect those advising, encouraging, aiding, abetting, *and ratifying the overt acts* committed for the purpose of carrying into effect the object of the conspiracy. This court, as the trier of fact, must consider every fact in issue which will enable it to arrive at a satisfactory conclusion. Wagley v. Colonial Baking Company, et al., 208 Miss. 815, 45 So. 2d 717, 725 (1950); Southern Christian Leadership Conference, Inc., et al. v. A. G. Corporation (cited *supra;* see 241 So. 2d at page 625).

Where two or more persons conspire together, the conspiracy makes the wrongful act of each person the joint acts of them all. Southern Bus Lines, Inc. v. Amalgamated Association of Street, Electrical, Railway and Motor Coach Employees, et al., 205 Miss. 354, 38 So. 2d 765, 769 (1949); State ex rel Rice v. Hasson Grocery Co., 177 Miss. 204, 170 So. 234 (1936); Globe & Rutgers Fire Insurance Co. v. Firemen's Fund Insurance Co., et al., 97 Miss. 148, 52 So. 454 (1910). It follows that each act done in pursuance of the conspiracy by one of several conspirators is, in contemplation of the law, an act for which each is jointly and severally liable. This joint and several liability of a conspirator applies to damages ac-

cruing prior to his joining the conspiracy as well as damages thereafter resulting, regardless of whether he took a prominent or an inconspicuous part in the execution of the conspiracy. This liability of each member of a conspiracy for the damage resulting therefrom, exists whether or not the conspirator profited from the result of the conspiracy. 16 Am. Jur. 2d, Conspiracy, Section 48, pp. 151-152.

The malicious [8] interference by the defendants with the businesses of the complainants as shown by the evidence in this case is tortious *per se*, and this would be true even without the element of conspiracy. Memphis Steam Laundry-Cleaners, Inc. v. Lindsey, 192 Miss. 224, 5 So. 2d 227, 232 (1941). The motives and malice of Charles Evers, the Field Secretary of the NAACP in Mississippi, together with the plenipotentiary authority accorded the Mississippi contingents of that New York Corporation while they were engaged in carrying out the efforts of attempting to destroy the businesses of complainants, were the motives and malice of the NAACP itself.[9] The national NAACP was well-advised of Evers' actions, and it had the option of repudiating his acts or ratifying them. It never repudiated those acts, and therefore, it

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[8] This term is used here in the legal sense, and not necessarily in the ordinary sense. Malice in law has been defined as the intentional performance of an act harmful to another without just or lawful cause or excuse. Brown v. Guaranty Estates Corp., 239 N.C. 595, 80 S.E. 2d 645, 40 A.L.R. 2d 1094.

[9] Aaron E. Henry, a prominant black leader in the State of Mississippi, who was president of the Mississippi State Conference of the NAACP, president of the Coahoma County Branch of the NAACP, and a member of the Board of Directors of the national NAACP, testified that the NAACP "absolutely did not approve of the way the boycott was being conducted in Port Gibson." There is also evidence in the record tending to show that Evers was called to account by the national NAACP because of the manner in which the boycott was conducted. However, the NAACP took no action whatever to curb Evers' activities in this connection.

is deemed by this Court to have affirmed them. A case on all fours with this proposition is National Association For the Advancement of Colored People, et al. v. Haldred Overstreet, 384 U.S. 118, 86 S. Ct. 1306, 16 L. Ed. 2d 409, reh den 384 U.S. 981, 86 S. Ct. 1857, 16 L. Ed. 692 (1966), *quod vide.*

In 16 Am. Jur. 2d, Conspiracy, Section 47, p. 151, the general rule is stated that "(A) Corporation may be liable for damage to a third person resulting from a conspiracy among its directors or stockholders or a conspiracy of its agents with other persons or corporations. It is held, though, that a corporation cannot be a party to a conspiracy consisting of the corporation and the persons engaged in the management, direction, and control of the corporate affairs, where the individuals are acting only for the corporation and not for any personal purpose of their own . . ." Under this rule, the question has been raised as to whether or not Charles Evers, as an individual, could be deemed a conspirator, since, it is argued, he was acting only for the NAACP in instigating the boycott. In answering this question, this Court is of the opinion that clear and decidedly strong evidence shows that Evers acted not only for the NAACP but also for personal purposes of his own. But, *arguendo*, let it be supposed that at the time the boycott was commenced he (Evers) was, in fact, acting solely as an agent of the NAACP. The record shows that under adverse examination by counsel for complainants, Evers testified that he terminated his relation as Field Secretary of the NAACP in February or March, 1969. Nevertheless, the record clearly reveals that for quite some time *after* he terminated his position as Field Secretary of the NAACP, he was still very intensely engaged in the boycott against the white merchants of Claiborne County and Port Gibson, in his individual capacity. In fact, it was on Monday, April 21, 1969, that he called for an intensification of and a total and complete boycott

of all white-owned business establishments in Claiborne County, and warned a large audience of black people: "If we catch any of you going in any of them racist stores, we're gonna break your damn neck."

As to all of the other individual defendants named above, it is the opinion of the Court that they had no voice whatever in the management, direction, or control of the national NAACP, nor were they in any sense agents of that New York corporation. They were acting for personal purposes of their own, even though they may have been members of the local Claiborne NAACP. They, along with Evers as an individual, and along with MAP, were engaged in a conspiracy with the NAACP, and among themselves, to subject the white merchants of Port Gibson and Claiborne County to an illegal boycott.

SECONDARY BOYCOTT

The uncontradicted evidence introduced into the record established that defendants conducted a secondary boycott against complainants and other white merchants of Port Gibson and Claiborne County.

The Mississippi law recognizes two classes of boycotts, i. e., (1) primary and (2) secondary. Southern Christian Leadership Conference v. A. G. Corporation, *supra* (which will be referred to hereinafter as the SCLC Case). A primary boycott is a combination of two or more persons by concerted action to cease dealing either socially or in a business way with a person with whom the combination has a direct dispute. A secondary boycott is a combination, not merely to refrain from dealing with such person or to advise or by peaceful means persuade his customers to refrain, but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withdraw or withhold their patronage through fear of loss or damage to themselves.

Those acting in concert to bring about a secondary boycott are also engaged in a conspiracy. 15 A C.J.S., Conspiracy, Section 12, p. 631.

A common law primary boycott is a boycott applied directly and alone to the offending party by withdrawing from him all social and business relations on the part of the party initiating the boycott. Booker Kinnaird v. Louisville Board of Fire Underwriters, 188 Ky. 771, 224 S. W. 451, 21 A.L.R. 531.

A secondary boycott occurs when a combination directs pressure upon a neutral party to induce or coerce the neutral party to take action against, or cease doing business with, the person with whom the combination has a dispute. *The gravamen of the secondary boycott is that its sanctions press not upon the person with whom the combination has the primary dispute, but upon some third party who has no concern with the controversy.* National Woodworkers Manufacturing Association v. NLRB, 386 U. S. 612, 87 S. Ct. 1250, 18 L. Ed. 2d 357 (1967); Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO, v. NLRB, 366 U. S. 667, 81 S. Ct. 1285, 6 L. Ed. 2d 592 (1961); International Brotherhood of Electrical Workers, Local 501, et al. v. NLRB, 181 F 2d 34 (1950).

In order to protect unoffending, or neutral, parties from pressures in controversies not their own, the Mississippi Legislature enacted Section 97-23-85, MCA 1972 [10]. The intent of this statute is to prohibit action

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[10] Section 97-23-85. If two (2) or more persons conspire to prevent another person or other persons from trading or doing business with any merchant or other business and as a result of said conspiracy said persons induce or encourage any individual or individuals to cease doing business with any merchant or other person, and when such conspiracy is formed and effectuated because of a reasonable grievance of the conspirators over which the said merchant or place of business boycotted or against which a boycott is attempted has no direct control or no legal authority to

which is calculated to enlist the aid in a controversy of a person who is himself not engaged in the dispute. It has the effect of confining the action to the sphere of communication directly related to the dispute and banning any action which could be utilized to conscript, in a given struggle or controversy, a person who is not himself a party thereto.

Defendants contend that Section 97-23-85 is unconstitutional under the First and Fourteenth Amendments of the United States Constitution. This contention is without merit, for the reason that conduct and communication which are illegal are not protected by the constitutional provisions relating to freedom of speech. Giboney v. Empire Storage and Ice Co., 336 U. S. 490, 69 S. Ct. 684, 93 L. Ed. 834 (1949). If the basic premise that secondary boycotts are unlawful under both United States and Mississippi law can be upheld, as it has been, then the provisions of Section 97-23-85 making activities of parties in furtherance of such boycotts illegal will not be invalid because freedom of speech and expression are thereby restricted. NLRB v. Wine L & D Union, (CA2, 1949) 584 F. 2d 584, 16 ALR 2d 762, 767-769 [11].

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correct, or when the conspiracy results from such alleged grievance against the merchant or other person boycotted when no notice of such grievance has been given the merchant or party boycotted and no reasonable opportunity to correct such alleged grievance has been given such merchant or other person against whom the conspiracy was formed, then each of such persons shall be guilty of the crime of unlawful restraint of trade and shall be fined not more than one thousand dollars ($1,000.00) or imprisoned for not more than two (2) years and in addition each such person shall be liable in civil action for any damages suffered by said merchant or place of business so wrongfully boycotted and also for attorney fees incurred by said merchant or person boycotted in a civil action to recover damages.

[11] Annotation 16 ALR 2d 769: Constitutionality and Construction of provision of Labor Management Relations Act (Taft-Hartley) making it unfair labor practice for labor organization to engage in secondary boycott.

Section 97-23-85 also takes into its purview the illegality of a primary boycott under the following circumstances:

> ". . . or when the conspiracy results from such alleged grievance against the merchant or other person boycotted *when no notice of such grievance has been given the merchant or party boycotted and no reasonable opportunity to correct such alleged grievance has been given such merchant or other person against whom the conspiracy was formed . . .*" (Emphasis added.)

This statutory language does not prevent articulation, conduct or communication growing out of a grievance, nor does it proscribe a primary boycott. It simply states that such a merchant or other party must have notice of the thing or circumstance giving rise to the grievance, so as to afford him the opportunity of escaping the dire and ruinous effects of a boycott through correcting the cause of the grievance. It is simple Hornbook law that a person has the right to pursue any valid calling, vocation or business without unreasonable hindrance. These things are property rights, and they also have the protective cloak of the Constitution placed around them. If the grievance is valid, and the merchant or other person does nothing by way of correction, then the statute in no sense bans a primary boycott.

In the SCLC Case, the Court found that the Appellants were, in fact, conducting a secondary boycott, since the appellee was ". . . in effect an innocent bystander who ultimately became the innocent victim of this struggle for political and economic power . . ." (See 241 So. 2d at page 624). But the appellants (defendants in the lower court) contended that they were also conducting a primary boycott, and that this somehow erased the principal purpose of the boycott and bestowed upon them a respectable aura of legality, just as the defendants in

the case *sub judice* have contended. In *SCLC* the defendants argued that they were only exercising rights vouchsafed them by the First and Fourteenth Amendments, just as the defendants in the case at bar have done. In *SCLC*, one of the assignments of error was (241 So. 2d at page 624):

> "The Court erred in holding that defendants had acted in concert against complainant for an unlawful purpose because:
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> "a) Defendants' right *to boycott complainant* for the purpose of protesting *its racially discriminatory employment practices and other discriminatory treatment of Negroes* is protected by the First and Fourteenth Amendments to the United States Constitution;"

In response to this assignment of error, the Court said:

> But the truth of the matter was that *no complaint of any kind, oral or written, was ever made by any of these defendants or by any employee or any customer to the appellee, its officers or agents.*" (Emphasis supplied.)

In so saying, the Court upheld the premise that a grievance or demand must be made known to the person against whom a primary boycott is directed before such person's constitutionally vouchsafed property rights can be invaded by such a boycott. This is precisely the statutory rule that is laid down in Section 97-23-85 in this regard. This rule does not violate the right of primary boycott, and therefore is not violative of the First and Fourteenth Amendments. Rather, it upholds the right to legally engage in a primary boycott, but at the same time it protects the rights of the target of an intended boycott. In short, it does not prohibit freedom of speech, and at the same time it protects the property rights of the person against whom the proposed boycott is aimed

by affording him the opportunity of correcting the circumstances giving rise to the grievance so as to avoid the economically ruinous effects of a boycott.

As has been mentioned above, the defendants take the position that since two of their demands (i. e., No. 7 in the letter of March 14, 1966, and No. 4 in the letter of March 23, 1966 [12]) arose from grievances they had against the white-owned businesses, the boycott lost its "secondary" nature and became "primary." The Court, of necessity, resorted to cases involving labor disputes to ascertain the rule in this regard.

In International Brotherhood of Electrical Workers, Local 480, AFL-CIO v. National Labor Relations Board (CA DC, 1969), 413 F. 2d 1085, the question to be resolved was whether the union was engaging in a "primary activity" or a "secondary activity," since certain aspects of both procedures were present. The Court held that the N.L.R.B. had the duty in such cases of determining the *true objective*, and in so holding said (413 F. 2d at page 1089):

> "It has been well recognized that the prohibitions of Section 8(b)(4)(i) and (ii)(B)[13] cannot be interpreted literally; what is rather called for is fine line-drawing between primary and secondary activity. General Electric, supra [14]. Further, '(i)mportant as is the distinction between legitimate 'primary activity' and banned 'secondary activity,' it

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[12] These demand letters are copied in full hereinabove, *q.v.* It will be noted that these letters were not addressed to any of the complainants or any other white merchants of Claiborne County.

[13] National Labor Relations Act, Section 8(b)(4)(i, ii)(B) as amended 29 U.S.C.A. 158(b)(4)(i, ii)(B).

[14] This refers to Local 761, International Union of Electrical Workers v. N.L.R.B., 366 U.S. 667, 677, 81 S. Ct. 1285, 6 L. Ed. 2d 592 (1961).

does not present a glaringly bright line.' *Id.*, 366 U.S. at 673, 81 S. Ct. at 1289. The Supreme Court, and this court, have made clear that the key factor is the *objective* of the union activity, whether it is aimed at the primary employer or whether it is *also aimed at pressuring the secondary employer. . .*" (Emphasis added.)

* * * *

"Although the union picketing appeared to square with the *Moore Drydock* [15] requirements, *the Board was correct in finding from external evidence that the picketing had the unlawful secondary object of coercing neutral employers . . .*" (Emphasis added.)

See also Gulf Coast Building & Supply Company, Inc. v. International Brotherhood of Electrical Workers, Local No. 480, AFL-CIO, (CA5, 1970), 428 F. 2d 121, wherein the Court discussed the rule relative to the distinction between a legitimate *primary object* and an illegal *secondary boycott* in these words (423 F. 2d at page 124):

"If Local 480's sole object was to force Gulf Electric to pay area standards and its actions were not intended to pressure neutral employers such as Gulf Coast to cease doing business with Gulf Electric *and were reasonably limited to accomplish its primary object*, then Local 480's actions did not constitute a secondary boycott. *If, however, Local 480 did have the purpose of forcing Gulf Coast to sever its ties with Gulf Electric, and its picketing was designed to accomplish that purpose, its actions amounted to a secondary boycott* in violation of (the)

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[15] Sailors Union of the Pacific (Moore Drydock), 92 N.L.R.B. 547 (1950). In *Moore Drydock* the Board set out four standards for picketing in (common situs) situations which would be *presumptive* valid primary activity.

National Labor Relations Act . . ." (Emphasis added.)

The testimony in the case at bar clearly shows that the principal objective of the boycott was to force the white merchants of Port Gibson and Claiborne County to bring pressure upon governing authorities to grant defendants' demands or, in the alternative, to suffer economic ruin. The two grievances aimed directly at the complaints [16] notwithstanding, the key factor in making this determination is the *objective* of the boycott. In applying the criteria employed by the United States Courts of Appeals for the Fifth Circuit and for the District of Columbia, *supra*, and, indeed, by the United States Supreme Court, this Court must conclude that defendants were carrying out an illegal secondary boycott.

Aside from what has been found and set out above, the Court is of the opinion that perhaps the most important aspect of this case in making a determination of whether the boycott was legal or illegal concerns the employment of tactics designed to keep the black people of Claiborne County out of the white-owned businesses through the use of threats, intimidation, abusive language, ridicule, coercion and, in some cases, outright violence. There is no need to reiterate these incidents

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[16] There is no evidence in the record clearly establishing that the defendants made any demands whatever directly on complainants in this regard. The letters were not addressed to any of the complainants, and except possibly through general rumors throughout the community and newspaper articles in this connection, they were never placed on notice. Moreover, the record shows that several of the complainants were kept under boycott even after they employed blacks in their businesses. After the Roosevelt Jackson incident, the boycott was imposed on *all white merchants* to force them to cause the governing authorities to discharge Wolf and McQuein, regardless of whether they employed black people.

here. Suffice it to say that the means used in this connection were highly successful and, unquestionably, brought about the ends that defendants set about to achieve. Fear and apprehension were powerful deterrents.

In the SCLC Case, Justice Robertson, speaking for the Court, very aptly said (241 So. 2d at page 625):

> "'*When any individual or organization under whatsoever name attempts to use force to gain his or her ends, they are attempting to usurp a governmental function. When a picket line becomes a picket fence, it is time for the government to act.* Carnegie-Illinois Steel Corporation v. United Steelworkers of America, 353 Pa. 420, 45 A. 2d 857.' (Southern Bus Lines, Inc. v. Amalgamated Ass'n., etc.), 205 Miss. at 374 and 376, 38 So. 2d at 768 and 769.
>
> "The Fourteenth Amendment to the United States Constitution, among other things, specifically provides: '* * * nor shall *any State deprive any person of* life, liberty, or *property, without due process of law* * * *.'
>
> "Surely this prohibition should apply with equal or greater force to private persons or organizations.
>
> "In condemning a conspiracy of private persons to destroy the business and livelihood of another, we said, in *Southern Bus Lines, Inc.*, supra:
>
> > "'*Private persons cannot conspire to illegally destroy the business of another, and where two or more persons conspire together, the conspiracy makes the wrongful acts of each the joint acts of all of them.* Globe & Rutgers Fire Ins. Co. v. Firemen's Fund Ins. Co. et al., 97 Miss. 148, 52 So. 454, 29 L.R.A., N.S., 869; State ex rel. Rice v. Hasson Grocery Co., 177 Miss. 204, 170

So. 234, 107 A.L.R. 663.' 205 Miss. at 375, 38 So. 2d at 769."

Accordingly, since an illegal boycott is an invasion of a property right, the members of the boycotting combination are liable for the resulting damages. This was an unlawful boycott. The fact that the claimed ultimate purpose of the boycott was to advance the interests of the combination does not cleanse it of its unlawful character. The direct and overriding purpose was to injure and destroy the businesses of the complainants; and the fact that it is contended that the boycott was designed as a means to an end, and the end in itself might be considered lawful, does not render the boycott in this case lawful.

RESTRAINT OF TRADE

The evidence in the record reveals that the defendants sought to restrain and eliminate all trade between the white merchants in Claiborne County and their black customers, and to direct black trade to black stores in the county or, in the alternative, to merchants out of Claiborne County.[17] The combination forged by the defendants unreasonably limited competition between the black merchants and the white merchants of the county, which had theretofore traditionally existed. The suppression of the competition between black and white merchants necessarily restrained commerce.

The purpose of this state's restraint of trade laws is to secure equality of opportunity. This purpose was thwarted when the group power of the NAACP, MAP and the individual defendants was utilized to eliminate the white merchants as competitors of the black mer-

[17] This was specifically required by MAP in cases where the necessary commodities for its Head Start units could not be obtained from black-owned stores in Claiborne County.

chants. In order to establish a violation of Mississippi law, it is not necessary for complainants to show that the combination arranged by defendants suppressed all competition between black and white merchants. The interest of the public in the preservation of competition is the primary consideration.

As a legal principle, it is sufficient to show that the concert of action on the part of the defendants was deliberately invited, and that the defendants gave their adherence to the scheme and participated in it. Retail Lumber Dealers Association v. State ex rel. Attorney General, 95 Miss. 337, 48 So. 1021, 1023 (1909); Standard Oil Co. of Ky. v. State ex rel. Attorney General, 104 Miss. 886, 61 So. 981 (1913); Grenada Lumber Co. et al. v. State ex rel. Attorney General, 98 Miss. 536, 54 So. 8 (1911).

Section 75-21-1, et seq., MCA 1972, declares that combinations or agreements between two or more persons, corporations or associations, the effect of which is to create or attempt to create monopolies or restraints of trade and commerce in the State, are inimical to the public welfare and are unlawful.

As has been stated hereinabove, the defendants conspired to, and did, engage in an unlawful boycott of complainants' businesses. It follows that the combination of the defendants and the agreements and understandings between the NAACP, MAP and the individual defendants, as revealed in the record in this case, are within the express prohibitions of the Mississippi statutes relating to restraints of trade. Under the laws of this state, any private person or corporation may sue for damages of every kind growing out of such restraints of

trade, and in addition may recover a penalty of $500.00 in each instance of injury.[18]

The NAACP, a nonresident corporation, was a party to the combination, agreement and understanding of defendants. The NAACP was a party to the unlawful boycott. Under the laws of Mississippi relative to attachments in chancery, the funds of the NAACP in the hands of attachment defendants within this state are subject to attachment.[19]

After a careful consideration of the constitutional claims of defendants, the Court finds that none of the acts or conduct of defendants was shielded or protected

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[18] Section 75-21-9, MCA 1972:

"Private persons and corporations may sue.

Any person, natural or artificial, injured or damaged by a trust and combine as herein defined, or by its effects direct or indirect, may recover all damages of every kind sustained by him or it and in addition a penalty of five hundred dollars ($500.00), by suit in any court of competent jurisdiction. Said suit may be brought against one or more of the parties to the trust or combine and one or more of the officers and representatives of any corporation a party to the same, or one or more of either. Such penalty may be recovered in each instance of injury. All recoveries herein provided for may be sued for in one suit."

[19] Section 11-31-1, MCA 1972:

"The chancery court shall have jurisdiction of attachment suits based upon demands founded upon any indebtedness, whether the same be legal or equitable, or for the recovery of damages for the breach of any contract, express or implied, or arising ex delicto against any nonresident, absent or absconding debtor, who has lands and tenements within this state, or against any such debtor and persons in this state who have in their hands effects of, or are indebted to, such nonresident, absent or absconding debtor. The court shall give a decree in personam against such nonresident, absent or absconding debtor if summons has been personally served upon him, or if he has entered an appearance."

by the Constitution of the United States or the Constitution of the State of Mississippi.

Moreover, the Court finds that Sections 11-31-1 through 11-31-11, MCA 1972 (attachments in chancery), Sections 75-21-1 through 75-21-39, MCA 1972 (trusts and combines in restraint or hindrance of trade), and Section 97-23-85 (unlawful restraint of trade—boycott) are all constitutional as written and as applied in this case.

The Court finds that, as a matter of law, the defendants were not entitled to a jury trial in the chancery court. This is a court of equity; this suit came within the exclusive jurisdiction of this court through the injunctive process and through the complainants' prayer for an attachment in chancery. It was incumbent upon this court to hear the case in full once jurisdiction was assumed. To have heard the portions of this matter sounding in equity, only, and to have transferred the questions of tort liability and damages to the circuit court would have been contrary to the maxim "equity delights to do complete justice, and not by halves." Although this court has the power to empanel a jury,[20] nevertheless the granting of a jury trial by the chancery court is not a matter of right, but is wholly discretionary with the chancellor; and, moreover, the verdict of a jury in chancery is purely advisory and the chancellor may entirely disregard it. Submission of an equity case to a jury is seldom allowed or desired; and, even in cases where this is done, the action of the chancellor with reference to a jury and to the issues before the jury cannot be reviewed; upon appeal the question is whether upon the record the degree is correct irrespective of the jury, in the same manner as if no jury had been present. Griffith, Mississippi Chancery Practice, 2d Ed., Sec. 597, p. 634. See also State v. Marshall, 100 Miss. 646, 56 So.

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[20] Section 11-5-3, MCA 1972.

792 (1911); Bland v. Bland, 105 Miss. 483, 62 So. 641 (1913); First State Bank v. Lincoln, 97 Miss. 726, 53 So. 387 (1910); Griffin v. Jones, 170 Miss. 230, 234, 154 So. 551 (1934). The general rule is set out in 47 Am. Jur. 2d, Jury, Section 32, pp. 650-652. No defendant was deprived of any legal right or constitutional right by reason of the fact that this equity action was heard without a jury.

DAMAGES AND PENALTIES

The complainants proved, in this record, that they suffered injury to to their respective businesses as the direct and proximate result of the unlawful secondary boycott [21] and the defendants' actions in unlawfully restraining trade, all of which was accomplished by defendants through a conspiracy. Damages, of course, are the pecuniary consequences which the law imposes for a breach of some duty on the part of the defendants or the violation of some right of the complainants. 22 Am. Jur. 2d, Damages, Sec. 1, p. 13. And for the wrongful injuries inflicted on the complainants by the defendants, the complainants are entitled, as a matter of law, to be made whole and receive full compensation. Cook Industries, Inc. v. Carlson (Miss. 1971), 344 F. Supp. 809, 816-819.

The causation of the injury and damage to the complainants has been sufficiently established by the evidence, and the complainants have established by the evidence in the record that the illegal conduct of the defendants was the factor causing the injuries inflicted on the respective businesses of the complainants. The complainants have proved, not only by a preponderance of the evidence, but also clearly, concisely and convincingly, the

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[21] Regardless of whether the boycott was primary or secondary, any kind of boycott is unlawful if executed with force or violence or threats; and a conspiracy to that end is likewise unlawful. SCLC Case, *supra*, and authorities cited therein.

four important elements of their case, viz.: (1) the breach of a duty by the defendants, (2) the violation of complainants' rights, (3) causation of injury, and (4) the amount of damages suffered.

The method used to determine the amount of damages suffered by twelve of the businesses [22] is set out in detail in the record. The remaining complainants presented no evidence as to their business losses. It is the considered opinion and finding of the Court that the method employed by the twelve businesses to establish their damages was the most reasonable basis for the computation of their losses, and included the best evidence which was obtainable under the circumstances of the case. The complainants' evidence as to damages was not eroded by evidence offered by defendants.

The highly detailed financial data used by the three certified public accountants who testified for complainants were derived from: (1) federal forms 1065 (partnerships), (2) federal forms 1040, Schedule C (individual profit and loss), (3) federal forms 1120 (corporations), and (4) State of Mississippi forms ST-4 (sales tax). The accountants testified that after carefully studying alternative methods available to them to measure the performances of the twelve businesses, they concluded that the tax returns, which were accepted by both the federal and state authorities, were the most feasible data under the circumstances. The complainants involved in the said businesses testified that these tax returns were true and correct. In order to avoid distortion of the measurement of actual business performance, the ac-

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[22] These twelve businesses consist of three corporations, five sole proprietorships, and four partnerships. The partnerships, in aggregate, consist of nine of the complainants. In accord with the method employed by expert witnesses to compute losses, each of these businesses is treated as an entity although they involve seventeen of the complainants.

countants did not use items of non-operating income or expenses, such as rental income, loss on sale of fixed assets, etc.

In compiling the financial data, the accountants used a 13-year span from January 1, 1960, through December 31, 1972. This time span afforded a broad base for comparative purposes. The Court is of the opinion that the manner of presenting the financial data was in all respects proper and in accordance with generally accepted accounting principles.

The gross rather than net sales for the years 1960-1972, inclusive, were submitted to an expert professional economist and consultant. These gross sales figures measured the volume of sales, and thus the volume of trade. Net income figures were later used by the accountants in converting volume losses to income losses. The expert economist used the financial data supplied by the accountants to prepare an economic impact study.

The economics expert testified that the use of economic analysis is a widely accepted and respected tool for determining monetary losses or damages. (Although defendants had their own economist in the courtroom during complainants' testimony as to damages, they did not refute the testimony given by complainants' expert witnesses). Economic statistical analysis consists of a set of analytical methods, chiefly mathematical, for collecting, evaluating, interpreting and making forecasts from known data. The use of statistical analysis has become widespread in business and economics, and its validity within predictable parameters is accepted in scientific circles. The economist testified that with respect to the cases of the twelve businesses recognized statistical techniques were employed to evaluate the impact of the economic trauma of the boycott on these retail establishments and to determine the amounts of sales lost by these firms as a result of the actions of the defendants.

Actual sales for the years 1960-1965 were used by the economist for establishing a past trend. He testified that he used a technique in statistics known as "linear regression" or "line of regression" to establish a trend line of sales for the period 1960-1972, inclusive. He employed a mathematical method called "least squares," which in the field of economics is an accepted and widely-used technique of fitting a curve to data; it is the most popular method of computing the trend of a time series.

He testified that the method of "least squares" gives the most satisfactory measurement of the trend of a series in the circumstances of the twelve businesses, and it afforded the most satisfactory and impersonal method of making the calculations.

The percentages of net earnings to gross sales were computed for the six-year period 1960-1965, inclusive, and averaged in order to determine the means of converting lost sales into lost earnings for the period 1966-1972, inclusive. The percentages arrived at represented the average earnings which resulted from sales during the span of normal years, i. e., those years free from the influence of the boycott. The period gives a broad base for accurate measurement of earnings and is in accord with accepted accounting standards.

After determining earnings lost for a specific year, it was also necessary to compute a loss of interest on monies which would have been available to each business. Since monies were lost to each of the twelve businesses, these monies were not available for investment, and thus a loss of return or interest on investment resulted. The interest rate used by complainants's [sic] expert witnesses was 5% annually computed from the end of the loss year forward to December 31, 1972. The Court is of the opinion that the method of computing interest was proper. The rate applied was reasonable and, if anything, somewhat conservative. The evidence

established that it was an average of the prevailing available interest rates from banks and savings and loan institutions for the years 1967-1672 [sic].

The complainants introduced evidence of the loss of good will by some of the business establishments. The certified public accountants testified that good will is an intangible asset which exists when the actual or expected earnings produced by the assets of a business (exclusive of good will) are in excess of a normal return. Good will is generated by any factors which cause attractive earnings results, such as satisfactory customer and employee relationships, location of the business and "know how."

Complainants' expert witnesses testified that there are recognized and accepted methods for the computation of good will. In making the computation of the loss of good will, relative to the twelve businesses, these expert witnesses testified that they utilized the "capitalization of excess earnings" method. This method, in the opinion of these witnesses, is considered the theoretically soundest approach by standard accounting texts and has been established by the Internal Revenue Service as its accepted guideline in Revenue Ruling 68-609. The Revenue Ruling reinforces the accounting and economics concept, testified to by complainants' expert witnesses, which was not contradicted by defendants, that all earnings are a return on assets utilized by a business. The assets may be tangibles such as cash, land, buildings or the intangible good will. Although the expected rate of return on the two major divisions of assets will undoubtedly vary according to the type of business, an 8% return on tangible assets and a 15% return on the intangible asset of good will are used by the Internal Revenue Service in cases of businesses with small risk factors and stable regular earnings, the category into which the retail businesses of complainants would fall. The computations of the loss of the good will asset was made as of December

31, 1972, and was based on the earnings as of that date. The Court considers this appropriate and reasonable because the evaluation was made on the current degree of recovery from loss prior to that date. The Court is of the opinion, based on the reasonable, persuasive and uncontradicted evidence in the record, that the loss of earnings suffered by the twelve businesses was the result of the external influence exerted on customer relations by the unlawful boycott employed by the defendants against the white merchants of Claiborne County. Thus, it is inescapable that the resulting loss of the value of the respective twelve businesses, due to destroyed customer relations, is a loss of good will. Applying the 15% capitalization rate of the twelve businesses in the year prior to the valuation date of December 31, 1972, would produce a reasonably accurate figure of lost good will.

This Court, as the fact finder in this case, has the task and responsibility of judging the credibility of the witnesses, resolving the conflicting evidence, if any, and assessing the weight of the testimony. The Court finds that the expert witnesses introduced by the complainants properly rested their testimony, with references to causation of the losses suffered by the twelve businesses, on the fact of the boycott conducted by the defendants against the white merchants of Claiborne County. The Court has heretofore made its finding that the boycott and the effect of this economic trauma on the twelve businesses is not challenged by the evidence in the record. The position of the defendants is simply that the boycott did in fact cause business losses, as it was intended to do. Thus, causation is admitted. Defendants base their defense on the concept that the right to boycott and inflict losses on complainants was a legally protected right afforded them under the laws and Constitution of the United States. This Court has hereinbefore found that the conduct of the defendants was unlawful and unprotected.

The defendants produced no evidentiary facts during the exceedingly lengthy trial which would establish any factor, other than their actions, to account for the *cause* of the losses suffered by the twelve businesses. The evidence establishes that the actions of the defendants was the sole proximate cause of the injuries to complainants.

Although the burden on the complainants of establishing the amount of damages is less strict than the burden of proving the fact of damages and causation, evidence submitted by the complainants as to the methods used to compute the amount of damages in this case is of a high degree of certainty. The defendants produced no credible or creditable evidence to contradict the accuracy of those methods, nor did they attempt any computation on their own. The Court, accordingly, must conclude that the evidence in the record, as testified by complainants' expert witnesses, relating to the losses of the twelve businesses, is reasonable and proper. The Court is of the opinion that the complainants involved, respectively, in the twelve said businesses should recover the actual damages proved by the methods utilized.

The complainants contend that in addition to actual damages they have the right to recover, as to the respective businesses, a statutory penalty of $500.00 *from each defendant* under the provisions of Section 75-21-9, MCA 1972[23]. It is apparent that complainants construe the following language of that statute:

> ". . . all damages of every kind sustained by him or it and in addition a penalty of five hundred dollars ($500.00), by suit in any court of competent jurisdiction. Said suit may be brought against one or more of the parties to the trust or combine and one or more of the officers and representatives of any corporation a party to the same, or one or more

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[23] This statute is set out in full in footnote 18, p. [55b], *supra*.

> of either. Such penalty may be recovered in each instance of injury . . ."

to mean that each of the 134 defendants is liable on this statutory penalty to each of the twelve businesses proving actual damages, as well as to five of the businesses that failed to prove any damages whatever but which were, nevertheless, placed under the boycott. As a consequence of this construction of the statute by complainants, they contend that each of seventeen businesses is due the sum of $67,000.00 in statutory penalties, aggregating the sum of $1,139,000.00.

This contention is without merit. The statute to be applied here limits the penalty to those complainants, and only those complainants, who have been ". . . injured or damaged by a trust and combine as herein defined . . ." It follows of course that unless the claimed injury or damage is shown by competent evidence, no statutory penalty ". . . in addition (thereto) . . ." can be assessed under the statute. Since the five businesses here in question have not been found by the court to have suffered any injury or damage, no sum in statutory penalty is due them.

Moreover, this Court is of the opinion that the statute clearly should be construed to mean that a penalty of $500.00 is to be assessed against the offending trust, combine or conspiracy, and *not* against each person making up the trust, combine or conspiracy. Counsel for complainants cite as authority in support of complainants' position the case of Delmas v. Pascagoula St. Ry. & Power Co., 103 Miss. 235, 60 So. 210 (1912). That case involved the construction of Section 5007, Miss. Code 1906, which contains language closely paralleling Section 75-21-9, MCA 1972, insofar as providing a penalty in the sum of $500.00 to be recovered by one damaged by a combine, in addition to actual damages, is concerned. But a close reading of that case shows that it militates

directly against complainants' contention, in these words (60 So. at page 211):

> ". . . It seems clear from a careful reading of the section that the injured party is given the right of action against the person violating the provisions of the chapter for all actual damages sustained, *and, in addition thereto, that he can recover the sum of five hundred dollars . . .*" (Emphasis added.)

It is true that the Delmas Case was based on a point not involved in the case at bar, in that it entailed a claim for the sum of $500.00 in penalties for each day the trust or combine was in violation of law, which the Court held was without merit. But it will be noted that the Court did not extend the penalty against each person engaged in any such violation; it simply said with finality that in addition to actual damages the injured party ". . . *can recover the sum of five hundred dollars . . .*" (Emphasis added.)

The Court concludes, in ruling on complainants' contention in this connection, that only the twelve businesses proving actual damages come within the purview of the penalty provided in Section 75-21-9, MCA 1972, and that each of those businesses may recover the sum, and only the sum, of $500.00 as a penalty.

The Court finds that the following named complainants are entitled as a matter of law to the recovery of actual damages and penalties from the defendants hereinabove named, jointly and severally, in the following amounts:

Complainants	Actual Damages	Penalties	Total
Claiborne Hardware Co., Inc.	$ 14,187	$ 500	$ 14,687
Q. H. McDaniel, Jr. d/b/a/ McDaniel Pharmacy	165,551	500	166,051
James E. Hudson & George Hudson, d/b/a Hudson Brothers Piggly-Wiggly Store	215,197	500	215,697
Waddy Abraham, d/b/a Jitney Jungle	141,717	500	142,217
Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store	34,141	500	34,641
Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store	153,316	500	153,816
Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria	92,413	500	92,913
Port Gibson Lumber & Supply Company, Inc.	3,350	500	3,850
W. H. Hay, d/b/a O.K. Cleaners & Shirt Laundry	82,580	500	83,080
Charles R. Dobbs d/b/a Western Auto Associate Store	16,853	500	17,353
Allen Motor Co., Inc.	3,307	500	3,807
Mrs. Edgar A. McCaa, d/b/a Town & Country	22,087	500	22,587
TOTALS	$944,699	$6,000	$950,699

This Court finds that no injuries or damages were proved by the other complainants herein, and that they shall take nothing, they being the following, viz.: H. B. Hudson, Jr., d/b/a Hudson's Gift Shop; Louis N. Ellis, as Executor of the Will and Estate of Michael Ellis, de-

ceased; Louis N. Ellis, d/b/a Abe's Betty Jean & Port Gibson Trading Co.; H. D. Harwell, d/b/a Mack's Package Store; Kelly D. Conn, d/b/a Auto-Lec Associate Store No. 225; A & P Service & Parts, Inc.; Donald Segrest Ford, Inc.; and the Intervenor Harold J. Barkley, Jr., as Trustee in Bankruptcy in the matter of Radford S. Jones, d/b/a Jones' Five 'n' Ten Store, bankrupt.[24]

The Court finds that the cross-bills herein filed by the NAACP and the individual defendants should be dismissed. Cross complainants wholly failed to meet the burden of proving the allegations set out therein.

Section 97-23-85,[25] MCA 1972, provides that each person defendant shall be liable for attorney fees incurred by the merchants or other person boycotted in cases such as the case at bar. The Court finds that the seventeen complainants hereinabove named, who sustained injuries by the concerted acts of the defendants, and who are hereinabove found to be due damages in the sums set forth, are entitled to be awarded attorney fees. The Court, having maturely considered the extremely complex nature of this case, the time and effort necessary in trial preparation, the framing of pleadings, the defenses necessary in federal court proceedings, and the extremely long trial in this court, is of the opinion that attorney fees in the amount of $300,000 are reasonable and proper.

All costs herein incurred shall be taxed against defendants. The actual damages and penalties awarded the seventeen complainants above named, in the sum of $950,699, together with attorney fees in the sum of $300,-

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[24] This list includes the five complainants who were denied recovery of penalties under Section 75-21-9, MCA 1972, for the reason that no actual injuries or damages as to them were shown by the evidence.

[25] See footnote 10, p. 55.

000, aggregating the sum of $1,250,699, shall be the joint and several liability of the defendants hereinabove named, and said sum shall bear interest at the legal rate from and after the date of rendition of the final decree herein.

OTHER RELIEF

The Court finds that the complainants are entitled to a permanent injunction, enjoining and prohibiting the defendants and all persons confederating with them from:

1. Stationing guards, store watchers, enforcers, deacons, or black hats, or by whatever name such persons are called, at or near the business premises of the complainants.

2. Persuading, soliciting, advising, threatening, coercing, intimidating and restraining any person to withdraw and withhold his or her patronage or to cease trading with the complainants.

3. Blocking the streets and sidewalks near the business establishment of any complainant or obstructing the entrance to the place of business of any complainant.

4. Using physical violence against any person; inflicting damage to any real or personal property of any person; or using demeaning and obscene language to or about any person; by reason of such person continuing to patronize or trade with any of the complainants or other persons.

5. Combining or colluding to interfere with the business of another person or for the purpose of restraining or monopolizing trade and commerce.

6. Picketing or patroling the premises of any complainant for the reason that the Court finds that the picketing is to attain an object which is in violation of the public policy of Mississippi, and has been conducted against a background of violence.

The funds attached by the writs of attachment in chancery in the hands and under the control of the named resident banks who answered and reported funds, are declared to be the funds of the nonresident NAACP. Such funds are to be paid to the complainants and applied toward the payment of damages and penalties due the complainants as determined in this opinion.

Counsel for the complainants will prepare a proposed final decree in accordance with the findings and conclusions of this opinion within 10 days from the date hereof. A copy of the proposed final decree will be submitted to counsel for the defendants at the same time the proposed final decree is presented to the Court.

DATED: August 9, 1976.

/s/ Geo. Wm. Haynes
Chancellor

APPENDIX C

MINUTES

SUPREME COURT OF MISSISSIPPI
September Term, 1980

No. 51,488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*

v.

CLAIBORNE HARDWARE COMPANY, *et al.*

WEDNESDAY, DECEMBER 10, 1980,
COURT SITTING:

This cause having been submitted at a former Term of this Court on the record herein from the Chancery Court of Hinds County and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order, adjudge and decree that the Decree of said Chancery Court rendered in this cause on the 19th day of August 1976—be and the same is hereby affirmed in part and reversed and rendered in part on liability, all as set out in the opinion of this Court and Judgment is rendered here for those defendants below who are listed on page 23 of the opinion of this Court; reversed and rendered in part on damages, all as set out on pages 24 and 25 of the opinion of this Court; reversed and remanded in part on damages, all as set out in the opinion of this Court. It is further ordered, adjudged and decreed that the appellees do pay all of the costs of this appeal to be taxed for which let proper process issue.

ORDERED: THAT THE COURT DO NOW ADJOURN UNTIL THURSDAY, DECEMBER 11, 1980 AT 9:30 A.M.

/s/ L. A. Smith
L. A. SMITH, JR.
Presiding Justice

APPENDIX D

SUPREME COURT OF MISSISSIPPI

ROBERT E. WOMACK, CLERK
Third Floor, Gartin Building
P.O. Box 117
Jackson, Mississippi 39205

December 19, 1980

Yvonne P. Burnham,
Deputy Clerk

Telephone
601/354-6014

Hon. Chris J. Walker
Upshaw & Ladner
Attorneys at Law
1675 Lakeland Dr.
407 Riverhill Tower
Jackson, MS 39216

RE: National Association for the Advancement of Colored People, et al

v.

Claiborne Hardware Co., et al, #51,488

Dear Mr. Walker:

This is to advise you that the Court has granted your motion for time to file a petition for rehearing in the above styled case.

Your petition for rehearing will be due on or before January 24, 1981.

Sincerely yours,

/s/ Robert E. Womack/djh
ROBERT E. WOMACK
Supreme Court Clerk

djh
c: Hon. A. Spencer Gilbert, III
Hon. Alix H. Sanders
Hon. Frank Parker
Messrs. Royals, Taylor & Epps
Hon. Dixon L. Pyles
Hon. W. E. Gore
Messrs. Shell, Buford, Bufkin, Callicutt & Perry
Hon. Charles E. Carter
Hon. Nathaniel Jones
Hon. William R. Richardson, Jr.
Hon. Arthur M. Weisburd
Hon. Lloyd M. Cutler
Hon. James Robertson
Hon. John Payton
Messrs. Banks & Nichols

APPENDIX E

IN THE SUPREME COURT OF MISSISSIPPI
DECISIONS HANDED DOWN MARCH 4, 1981

(Continued—Page 3)

[No. 51,488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*]

THE COURT SITTING EN BANC:

51,488 National Association for the Advancement of Colored People, et al. v. Claiborne Hardware Co., et al.; Chancery, Hinds; Appellants' Petition for Rehearing Denied; Appellants' Motion to Strike Exhibits A and B to Appellees' Petition for Rehearing Denied; Appellees' Petition for Rehearing Denied.

APPENDIX F

SUPREME COURT OF THE UNITED STATES

No. A-963

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners

v.

CLAIBORNE HARDWARE COMPANY, *et al.*

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 1, 1981.

/s/ Lewis F. Powell, Jr.
Associate Justice of the
Supreme Court of the
United States

Dated this 23rd day of May, 1981.

APPENDIX G

CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 78,353

CLAIBORNE HARDWARE COMPANY, *et al.*
Complainants

VS.

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*
Defendants

[Filed Aug. 19, 1976]

FINAL DECREE

The above entitled and numbered equity action was heard on the bill of complaint, the pleadings and answers of the defendants, and oral and documentary evidence. The Court has studied and considered the voluminous and exhaustive briefs on the factual and legal issues together with the oral arguments of the counsel for the parties. Thus, having been fully advised in the premises, and having maturely considered all of the factual and legal issues, this Court rendered "The Opinion of the Court" on August 9, 1976. It is made a part of and by reference incorporated into this final decree. On August 12, 1976, the Court signed an order for the entry of a final decree in vacation. The matters included in this "Final Decree" are those which have been extracted and condensed from the fuller discussion in the written opinion.

The Court has in personam jurisdiction of the parties and jurisdiction of the subject matter.

The complainants more than amply met the burden of proof and established by an overwhelming preponderance of the evidence that the defendants, named hereinafter, wrongfully combined and colluded in a civil conspiracy, engaged in an unlawful secondary boycott against complainants, illegally created a monopoly, unlawfully interfered with the business relations of the complainants, and unlawfully conspired to and did destroy and damage the businesses of complainants. The named defendants are jointly and severally liable to the twelve complainants, hereinafter set forth, in damages and penalties. The defendants jointly and severally liable to the complainants are:

1. National Association for the Advancement of Colored People;
2. Mississippi Action for Progress, Inc.;
3. Ferd Allen;
4. Henry Anderson;
5. Alonzo Atlas;
6. Beatrice Atlas;
7. Calvin Bailey;
8. James Bailey;
9. McLawrence Bailey;
10. Joseph M. Barber;
11. Kenneth C. Barber;
12. Bill Beasely;
13. Helen Beasley;
14. Calvin Blackburn;
15. Marjorie W. Brandon;
16. Eli Brooks;
17. Priscilla Brooks;
18. Janie Brown;
19. Tullos Brown;
20. Eddie Burrell;
21. James Burrell;
22. Robert Butler, Jr.;
23. Arthur Lee Camphor;

24. Irma Rae Camphor;
25. W. E. Camphor;
26. Maggie Clark;
27. Alberta Coleman;
28. Charles Collier;
29. James Collier;
30. Alexander Collins;
31. Geneva Collins;
32. Thelma Crowder;
33. Dan Currie (a/k/a Dan Curry);
34. Sarah Jane Currie (a/k/a Curry);
35. Charles Davis;
36. Mack Louis Davis;
37. Mary Ella Dee;
38. James Devoaual;
39. Alex Dorsey;
40. Sally Dorsey;
41. Geneva Durham;
42. Johnny Durham;
43. Mary Durham;
44. John Eggleston;
45. Harvey Ellis;
46. Jim Ellis, Jr.;
47. John Ellis
48. Katie Ellis;
49. Rachael Ellis;
50. Charles Evers;
51. Ethel Graise;
52. James Gray;
53. Walter L. Griffin, Sr.;
54. Bernard Gusta;
55. Leesco Gusta (Guster);
56. Charlie Harris;
57. Cline Harvey;
58. Jim Holt;
59. Albert Jackson;
60. Willie Jackson;

61. Mrs. E. J. Jennings;
62. Jesse Johnson;
63. Roscoe Johnson;
64. Julia Coleman Jones;
65. Lela Jones;
66. Marcus Jones
67. Nathaniel H. Jones;
68. Samuel Jones, Jr.;
69. Bobby Kelly;
70. Bernice Lee;
71. Edward Lee;
72. Margaret Liggan (Liggins);
73. Clarence Lucas;
74. Julia Lucas;
75. Nathaniel Martin;
76. Leander Monroe;
77. Johnny Moore;
78. Mary Lee Moore;
79. Willie V. Moore;
80. Ellis Neal;
81. Bessie Newman;
82. D. A. Newman;
83. Amos Newsome, Jr,;
84. James Odom;
85. Leona Owens;
86. Roosevelt Owens;
87. William Owens;
88. Henry Patton, Jr.;
89. Henry Otis Preston;
90. Evan Roberson;
91. Viola Robinson;
92. William (Willie) Robinson;
93. Mary Ross;
94. Odessa Ross;
95. William M. Matt Ross;
96. Elmo Scott;
97. Rudolph Shields;

98. Oliver Shinall;
99. Dora Shorter;
100. Roman Shorter;
101. Rosa Shorter;
102. Annie B. Smith;
103. Bilbo Smith;
104. Delores Smith;
105. Leon Tarleton;
106. Ira Thomas;
107. Carl Thompson, Jr.;
108. Marguerite Thompson;
109. (Rev.) Mack Tisdale
110. George Henry Walker;
111. Thelma K. Walker;
112. Eddie Walls, Jr.;
113. Lessie May Walls;
114. Alex Warner;
115. Alonzo Warner;
116. Ethel Warner;
117. Albert Weathers;
118. Bome Wells;
119. Carl Lee Wells;
120. Eddie Lee Wells;
121. Katie Wells;
122. James Whitney;
123. Calvin Williams;
124. Ernestine Williams;
125. Aaron Wilson;
126. Gussie Pearl Wilson;
127. (Rev.) Willie Wilson;
128. Early Wren;
129. Ruby Wren;
130. Arthur Wyatt.

The Court has been made aware that individual defendants, Ike Allison, Scott Crowder, Horace Lightfoot, and Teddy Liscomb have died since the trial of this cause ended.

The defendants entered into an agreement to withdraw and withhold their trade, and to induce all other members of the black race in Claiborne County to withdraw and withhold their trade from the complainants who are white individuals or corporations owned by white persons. The facts are beyond dispute that the purpose of the agreement was to interfere massively with the businesses of the complainants and other white merchants of Claiborne County. Economic coercion by way of interference was the objective of the defendants. The coercive efforts were designed and calculated to conscript the aid of the white merchants of Claiborne County by way of compelling them to influence, persuade, or force the public officials of Port Gibson and Claiborne County to accede to the demands of the NAACP.

It is beyond dispute that the defendant Map agreed to and did join with the NAACP and certain of the individual defendants in their plan of massive interference with the businesses of the complainants. Thereafter the officers and employees of MAP actively assisted the NAACP in carrying out the scheme of withholding business from all white merchants in Claiborne County.

The evidence shows that no defendant had any direct or primary dispute or controversy with any complainant or other white merchant of Claiborne County, except perhaps certain of defense witnesses who testified that they simply did not like white people in general.

The evidence clearly established that the defendants by their acts interfered with the right of each of the complainants to pursue a lawful business. The evidence also clearly establishes that the *defendants combined to commit*, and certain defendants acting for all, did commit overt acts which were injurious to the trade and business of the complainants; and by such acts the defendants hindered the sale and purchase of commodities in Claiborne County.

The evidence in the record of this action clearly establishes that the defendants engaged in a conspiracy under Mississippi law. Defendants unlawfully conspired to prevent the complainants from exercising their lawful trades and callings and doing other lawful acts by force, threats, and intimidation. The acts of the defendants were injurious to public morals, trade and commerce, because of the use of force and violence. The wrongful act of each of the defendants was the joint acts of all of them in pursuance of the conspiracy.

The uncontradicted evidence in this record establishes that the defendants conducted a secondary boycott against the complainants and other white merchants of Port Gibson and Claiborne County, in violation of Section 97-23-85, Mississippi Code Annotated (MCA), 1972. Defendants contend Section 97-23-85 is unconstitutional under the First and Fourteenth Amendments of the United States Constitution. However, this contention is without merit. Illegal conduct and communication are not protected by constitutional provisions relating to freedom of speech. Under Section 97-23-85 the merchant or other party must have notice of the circumstances giving rise to the grievance so as to be afforded the opportunity of escaping the dire and ruinous effects of a boycott through correcting the cause of the grievance. Section 97-23-85 does not prohibit freedom of speech. The principal objective of the boycott was to force the white merchants of Port Gibson and Claiborne County to bring pressure upon the governing authorities to grant defendants' demands or, in the alternative, to suffer economic ruin; and this Court concludes as a matter of fact and of law that the defendants were carrying out an illegal secondary boycott.

The evidence in this record establishes that the defendants sought to restrain and eliminate all trade between the white merchants in Claiborne County and their black customers, and to direct trade to black stores in the

county or, in the alternative, to merchants out of the county. The combination forged by the defendants unreasonably limited competition between the black merchants and white merchants of the county. The suppression of competition between black and white merchants necessarily restrained trade. Section 75-21-1 et seq., MCA 1972, declares combinations or agreements, the effect of which is to create or attempt to create monopolies or restraints of trade are inimical to the public welfare and are unlawful. The actions of the defendants are within the express prohibitions of the Mississippi statutes. Private persons may sue for damages of every kind resulting from such restraint of trade, and in addition may recover a penalty of $500 in each instance of injury.

The defendant NAACP, a nonresident corporation, was a party to the illegal combination and unlawful boycott. Under Section 11-31-1 through 11-31-11, MCA 1972, the funds of the NAACP in the hands of eleven attachment defendant banks were properly subject to attachment in Chancery. The Court is of the opinion that the sum of $16,831.67 in the hands of the banks are funds belonging to the NAACP, and that the funds were properly and legally attached. The attachment defendants who answered and reported funds are:

Date of Answer	Attachment Defendants	Amount of Funds
11-4-69	First National Bank, Jackson	$ 249.86
11-5-69	The First National Bank of Greenville	182.24
11-10-69	Bank of Cleveland	74.63
11-20-69	Commercial Bank, Woodville	171.48
11-20-69	Southern National Bank, Hattiesburg, Miss. State Youth Conference, NAACP	.33
11-21-69	Port Gibson Bank	247.59
12-8-69	Hancock Bank, Gulfport	151.92

12-5-69	Deposit Guaranty National Bank, Jackson Mechanics Bank of McComb (branch bank)	7,955.03
11-17-69	Merchants & Farmers Bank, Meridian	98.04
11-21-69	Citizens Bank of Hattiesburg	693.82
11-22-69	First National Bank of Clarksdale	6,500.00

Sections 11-31-1 through 11-31-11, MCA 1972 (attachments in Chancery), Sections 75-21-1 through 75-21-39, MCA 1972 (trusts and combines in restraint or hinderance of trade), and Section 97-83-75, MCA 1972 (unlawful restraint of trade—boycott), are all constitutional as written and applied in this case. As a matter of law, the defendants were not entitled to a jury trial in the chancery court. The granting of a jury trial by the chancery court is not a matter of right, but is wholly discretionary with the chancellor. The verdict of a jury in chancery court is purely advisory, and the chancellor may entirely disregard it. Submission of an equity case to a jury is seldom allowed or desired; and even in cases where this is done, the action of the chancellor with reference to a jury and to the issues before the jury cannot be reviewed. Upon appeal the question is whether upon the record the decree is correct irrespective of the jury. No defendant herein was deprived of any legal or constitutional right by reason of the fact that this equity action was heard without a jury.

Seventeen of the complainants proved that they suffered injury to their respective businesses as a direct and proximate result of the unlawful secondary boycott and the defendants' actions in unlawfully restraining trade, which was accomplished by defendants through a conspiracy.

The seventeen complainants proved by evidence clear, concise, and convincing that the defendants; (1) breached

their duties to the complainants, (2) violated complainants' rights, (3) caused injury and damage to the complainants, (4) in the amount of $1,250,699.00. The method used to determine the amount of damages suffered by twelve of the businesses is set out in detail in the record. The remaining complainants presented no evidence as to their business losses. The method employed by the seventeen complainants to establish their damages was the most reasonable basis for computation of their losses, and included the best evidence obtainable under the circumstances of the case. The complainants' evidence as to damages was in no way eroded by the defendants. The Court finds that the expert witnesses, introduced by complainants, properly rested their testimony, with reference to causation in the losses suffered by the twelve businesses, on the fact of the boycott conducted by the defendants against the white merchants of Claiborne County. The boycott and the effect of this economic trauma on the twelve businesses is not challenged by the evidence in the record. Causation is admitted. Defendants claim that the right to boycott and inflict losses on the complainants is a legally protected right afforded to them by the Constitution and laws of the United States. This Court has heretofore determined that the conduct of the defendants was unlawful and unprotected. The evidence establishes that the actions of the defendants was the sole proximate cause of the injuries to the complainant [sic]. The evidence submitted by complainants as to the methods used to compute the amount of damages in this case is of a high degree of certainty. The defendants produced no credible or creditable evidence to contradict the accuracy of those methods, nor did they attempt any computation of their own. The evidence in the record, as testified to by complainants' expert witnesses relating to losses of the twelve businesses, is reasonable and proper.

The Court concluded that only the twelve businesses proving actual damages came within the purview of the

penalty provision in Section 75-21-9, MCA 1972, and that each of the twelve businesses may recover the sum, and only the sum of $500 as a penalty.

The twelve named businesses are entitled as a matter of law to the recovery of actual damages and penalties from the defendants hereinabove named, jointly and severally, in the following amounts:

Complainants	Actual Damages	Penalties	Total
Claiborne Hardware Company, Inc.	$ 14,187	$ 500	$ 14,687
Q. H. McDaniel, Jr. d/b/a McDaniel Pharmacy	165,551	500	166,051
James E. Hudson & George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store	215,197	500	215,697
Waddy Abraham, d/b/a Jitney Jungle	141,717	500	142,217
Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store	34,141	500	34,641
Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store	153,316	500	153,816
Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria	92,413	500	92,913
Port Gibson Lumber & Supply Company, Inc.	3,350	500	3,850
W. H. Hay, d/b/a O.K. Cleaners and Shirt Laundry	82,580	500	83,080
Charles R. Dobbs, d/b/a Western Auto Associate Store	16,853	500	17,353
Allen Motor Co., Inc.	3,307	500	3,807
Mrs. Edgar A. McCaa, d/b/a Town & Country	22,087	500	22,587
TOTALS	$944,699	$6,000	$950,699

No injuries or damages were proved by the other complainants herein, and they shall take nothing, they being the following: H. B. Hudson, Jr., d/b/a Hudson's Gift Shop; Louis N. Ellis, as Executor of the Will and Estate of Michael Ellis, deceased; Louis N. Ellis, d/b/a Abe's Betty Jean & Port Gibson Trading Company; H. D. Harwell, d/b/a Mack's Package Store; Kelly D. Conn, d/b/a Auto-Lec Associate Store No. 225; A & P Service and Parts, Inc.; Donald Segrest Ford, Inc.; and the intervenor Harold J. Barkley, Jr., as Trustee in Bankruptcy in the matter of Radford S. Jones, d/b/a Jones' Five 'n Ten Store, bankrupt.

The cross-bills filed herein by the NAACP and the individual defendants should be dismissed. Cross complainants wholly failed to meet the burden of proving the allegations set out therein. All of the motions and objections of the parties not heretofore ruled upon are overruled.

Section 97-23-85, MCA 1972, provides that each person defendant shall be liable for attorney fees incurred by the merchant or other person boycotted in cases such as this equity action. The Court finds that the seventeen complainants above named, who sustained injuries by the concerted acts of the defendants, and who are hereinabove found to be due damages in the sums set forth, are entitled to be awarded attorney fees. The Court, having maturely considered the extremely complex nature of this case, the time and effort necessary in trial preparation, the framing of pleadings, the defenses necessary in the federal court proceedings, and the extremely long trial in this Court, is of the opinion that attorney fees in the amount of $300,000 are reasonable and proper.

All costs incurred shall be taxed against the defendants. The actual damages and penalties awarded the seventeen complainants above named, in the sum of $950,699, together with attorney fees in the sum of $300,000, aggre-

gating the sum of $1,250,699, shall be the joint and several liability of the defendants hereinabove named, and said sum shall bear interest at the legal rate from and after the date of rendition of this final decree.

The Court finds that the complainants are entitled to a permanent injunction, enjoining and prohibiting the defendants and all persons confederating with them from:

1. Stationing guards, store watchers, enforcers, deacons, or black hats, or by whatever name such persons are called, at or near the business premises of the complainants.

2. Persuading, soliciting, advising, threatening, coercing, intimidating and restraining any person to withdraw and withhold his or her patronage or to cease trading with the complainants.

3. Blocking the streets and sidewalks near the business establishments of any complainant or obstructing the entrance to the place of business of any complainant.

4. Using physical violence against any persons; inflicting damage to any real or personal property of any person; or using demeaning and obscene language to or about any person; by reason of such person continuing to patronize or trade with any of the complainants or other persons.

5. Combining or colluding to interfere with the business of another person or for the purpose of restraining or monopolizing trade and commerce.

6. Picketing or patrolling the premises of any complainant for the reason that the Court finds that the picketing is to attain an object which is in violation of the laws and public policy of Mississippi, and has been conducted against and enmeshed in a background of violence.

The funds attached by the writs of attachment in chancery in the hands and under the control of the named resident banks who answered and reported funds are declared to be the funds of the nonresident NAACP. Such funds are to be paid to the twelve complainants and applied toward the payment of damages and penalties due the complainants as determined hereinbefore and in the written opinion. It is therefore,

ORDERED:

A. The defendants, as set forth hereinafter, be and they are jointly and severally liable to the seventeen complainants. The defendants so declared to be jointly and severally liable are:

1. National Association for the Advancement of Colored People
2. Mississippi Action for Progress, Inc.
3. Ferd Allen
4. Henry Anderson
5. Alonzo Atlas
6. Beatrice Atlas
7. Calvin Bailey
8. James Bailey
9. McLawrence Bailey
10. Joseph M. Barber
11. Kenneth C. Barber
12. Bill Beasley
13. Helen Beasley
14. Calvin Blackburn
15. Marjorie W. Brandon
16. Eli Brooks
17. Priscilla Brooks
18. Janie Brown
19. Tullos Brown
20. Eddie Burrell
21. James Burrell
22. Robert Butler, Jr.

23. Arthur Lee Camphor
24. Irma Rae Camphor
25. W. E. Camphor
26. Maggie Clark
27. Alberta Coleman
28. Charles Collier
29. James Collier
30. Alexander Collins
31. Geneva Collins
32. Thelma Crowder
33. Dan Currie (a/k/a Dan Curry)
34. Sarah Jane Currie (a/k/a Curry)
35. Charles Davis
36. Mack Louis Davis
37. Mary Ella Dee
38. James Devoaual
39. Alex Dorsey
40. Sally Dorsey
41. Geneva Durham
42. Johnny Durham
43. Mary Durham
44. John Eggleston
45. Harvey Ellis
46. Jim Ellis, Jr.
47. John Ellis
48. Katie Ellis
49. Rachael Ellis
50. Charles Evers
51. Ethel Graise
52. James Gray
53. Walter L. Griffin, Sr.
54. Bernard Gusta
55. Leesco Gusta (Guster)
56. Charlie Harris
57. Cline Harvey
58. Jim Holt
59. Albert Jackson
60. Willie Jackson

61. Mrs. E. J. Jennings
62. Jesse Johnson
63. Roscoe Johnson
64. Julia Coleman Jones
65. Lela Jones
66. Marcus Jones
67. Nathaniel H. Jones
68. Samuel Jones, Jr.
69. Bobby Kelly
70. Bernice Lee
71. Edward Lee
72. Margaret Liggan (Liggins)
73. Clarence Lucas
74. Julia Lucas
75. Nathaniel Martin
76. Leander Monroe
77. Johnny Moore
78. Mary Lee Moore
79. Willie V. Moore
80. Ellis Neal
81. Bessie Newman
82. D. A. Newman
83. Amos Newsome, Jr.
84. James Odom
85. Leona Owens
86. Roosevelt Owens
87. William Owens
88. Henry Patton, Jr.
89. Henry Otis Preston
90. Evan Roberson
91. Viola Robinson
92. William (Willie) Robinson
93. Mary Ross
94. Odessa Ross
95. William M. Matt Ross
96. Elmo Scott
97. Rudolph Shields
98. Oliver Shinall

99. Dora Shorter
100. Roman Shorter
101. Rosa Shorter
102. Annie B. Smith
103. Bilbo Smith
104. Delores Smith
105. Leon Tarleton
106. Ira Thomas
107. Carl Thompson, Jr.
108. Marguerite Thompson
109. (Rev.) Mack Tisdale
110. George Henry Walker
111. Thelma K. Walker
112. Eddie Walls, Jr.
113. Lessie May Walls
114. Alex Warner
115. Alonzo Warner
116. Ethel Warner
117. Albert Weathers
118. Bome Wells
119. Carl Lee Wells
120. Eddie Lee Wells
121. Katie Wells
122. James Whitney
123. Calvin Williams
124. Ernestine Williams
125. Aaron Wilson
126. Gussie Pearl Wilson
127. (Rev.) Willie Wilson
128. Early Wren
129. Ruby Wren
130. Arthur Wyatt

The seventeen complainants, as set forth hereinafter, be and they are entitled to recover of and from the defendants named in Paragraph A, jointly and severally the actual damages and penalties set forth as follows:

Complainants	Actual Damages	Penalties	Total
Claiborne Hardware Company, Inc.	$ 14,187	$ 500	$ 14,687
Q. H. McDaniel, Jr. d/b/a McDaniel Pharmacy	165,551	500	166,051
James E. Hudson & George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store	215,197	500	215,697
Waddy Abraham, d/b/a Jitney Jungle	141,717	500	142,217
Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store	34,141	500	34,641
Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store	153,316	500	153,816
Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria	92,413	500	92,913
Port Gibson Lumber & Supply Company, Inc.	3,350	500	3,850
W. H. Hay, d/b/a O.K. Cleaners and Shirt Laundry	82,580	500	83,080
Charles R. Dobbs, d/b/a Western Auto Associate Store	16,853	500	17,353
Allen Motor Co., Inc.	3,307	500	3,807
Mrs. Edgar A. McCaa, d/b/a Town & Country	22,087	500	22,587
TOTALS	$944,699	$6,000	$950,699

C. The above named complainants be entitled to and they shall recover of and from all of the defendants, jointly and severally, reasonable attorney fees in the sum of $300,000.

D. The above named complainants be entitled to and they shall recover of and from all of the defendants, jointly and severally, the aggregate sum of $1,250,699, plus interest at the legal rate from and after the date of this final decree.

E. The defendants, and each of them, and all person confederating and cooperating with them be and they are hereby permanently enjoined from:

1. Stationing guards, store watchers, enforcers, deacons, or black hats, or by whatever name such persons are called, at or near the business premises of the above named complainants.

2. Persuading, soliciting, advising, threatening, coercing, intimidating and restraining any person to withdraw and withhold his or her patronage or to cease trading with the above named complainants.

3. Blocking the streets and sidewalks near the business establishment of any complainant or obstructing the entrance to the place of business of any of the above named complainants.

4. Using physical violence against any person; inflicting damage to any real or personal property of any person; or using demeaning and obscene language to or about any person; by reason of such person continuing to patronize or trade with any of the above named complainants or other persons.

5. Combining or colluding to interfere with the business of another person or for the purpose of restraining or monopolizing trade and commerce.

6. Picketing or patroling the premises of any of the above named complainants for the reason that the Court finds that the picketing is to attain an object which is in violation of the laws and public policy of Mississippi,

and has been conducted against and enmeshed in a background of violence.

F. The funds attached by the writs of attachment in chancery in the hands of and under the control of the hereinafter named resident banks be and they are hereby declared to be the funds of the nonresident defendant NAACP. Each of the resident attachment defendant banks as set forth hereinafter, be and they are hereby directed to pay to the seventeen above named complainants to be applied toward the payment of damages, the following sums:

Date of Answer	Attachment Defendants	Amount of Funds
11-4-69	First National Bank, Jackson	$ 249.86
11-5-69	The First National Bank of Greenville	182.24
11-10-69	Bank of Cleveland	74.63
11-20-69	Commercial Bank, Woodville	171.48
11-20-69	Southern National Bank, Hattiesburg, Miss. State Youth Conference, NAACP	.33
11-21-69	Port Gibson Bank	247.59
12-8-69	Hancock Bank, Gulfport	151.92
12-5-69	Deposit Guaranty National Bank, Jackson Mechanics Bank of McComb (branch bank)	7,955.03
11-17-69	Merchants & Farmers Bank, Meridian	98.04
11-21-69	Citizens Bank of Hattiesburg	693.82
11-22-69	First National Bank of Clarksdale	6,500.00

G. All costs of this action incurred by the above named complainants be and they are hereby taxed against the defendants.

H. All motions and objections of all parties, not heretofore ruled upon and disposed of, if any, be and they are hereby overruled.

I. For all damages, penalties, attorney fees, and costs assessed against the defendants, jointly and severally, let execution issue.

J. The sheriff of Claiborne County or other lawful officer is hereby directed to serve a copy of the "Final Decree" on each of the defendants.

ORDERED, ADJUDGED, AND DECREED, this the 19th day of August, 1976.

/s/ Geo. Wm. Haynes
Chancellor

APPENDIX H

IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

No. 51,488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Appellants

vs.

CLAIBORNE HARDWARE CO., *et al.*,
Appellees

PETITION FOR REHEARING

Come now Defendant-Appellant NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and all individual Defendant-Appellants herein and petition this Court for a rehearing in this case of the decision and opinion rendered on December 10, 1980, and a reconsideration of the following issue presented by this appeal.

The Court did not expressly rule upon Appellants' Assignment of Error Eight, assigning as error the lower court's enjoining of Appellants' boycott activities. Apparently, this Court believed that Appellants had abandoned their appeal on this point. In fact, Appellants have never abandoned their appeal of the Chancellor's injunction herein.

WHEREFORE, these Appellants pray that this Court will grant a rehearing, will consider the factual issues raised in this petition, will withdraw or modify that

portion of its Opinion and will reverse and remand that portion of the Judgment in this cause enjoining Appellants from engaging in activities protected by the First Amendment.

Respectfully submitted,

National Association for the Advancement of Colored People, et al.

By: /s/ A. Spencer Gilbert III
A. SPENCER GILBERT III
Post Office Box 1267
Jackson, Mississippi 39205
One of the Attorneys for the Appellant NAACP and all Individual Appellants

January 23, 1981

IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

No. 51,488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, *et al.*,
Appellants

vs.

CLAIBORNE HARDWARE CO., *et al.*,
Appellees

APPELLANTS' BRIEF IN SUPPORT OF PETITION FOR REHEARING

INTRODUCTION

Defendant-Appellant NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and all remaining individual Defendants-Appellants herein seek rehearing of this Court's apparent affirmance of the permanent injunction issued by the Chancery Court in this action. The Opinion of this Court dated December 10, 1980, does not expressly resolve Appellants' Assignment of Error Eight apparently because of the mistaken conclusion that Appellants had abandoned the point. Appellants did not abandon their Assignment of Error Eight, and therefore respectfully petition the Court to reconsider its treatment of the issues that the Assignment raises.

Posture of the Case on Rehearing

From 1966 to approximately 1972, the businesses of Appellees herein were at least periodically boycotted by black citizens of Claiborne County. In 1969, Appellees brought suit against Appellants herein, alleging that Appellants were responsible for the boycott and seeking damages and an injunction.

From a Decree of the Chancery Court awarding damages to Appellees and enjoining Appellants from engaging in certain activities, an appeal was taken to this Court. Appellants in their assignments of error challenged both the award of damages and the injunction.

The Holding of the Court

The only express reference to Appellants' challenge to the injunction herein is contained in the following paragraph from page 5 of the Opinion:

> (Although the granting of injunction [sic] has been assigned as error, the error has not been argued, and NAACP, et al. say, at the conclusion of their

brief ". . . the injunctive aspects of the case are now moot. . . .").

ARGUMENT

APPELLANTS HAVE NOT ABANDONED THEIR APPEAL OF THE INJUNCTIVE PORTIONS OF THE CHANCELLOR'S DECREE

The quotation from Appellants' opening brief cited at page 5 of the Opinion was taken from a portion of a footnote to the conclusion of that brief. That conclusion reads as follows in its full text:

> "For the reasons stated, the Final Decree appealed from should be reversed and judgment rendered for the Appellants. In the alternative, the Decree should be dissolved and the cause remanded with instructions that it be transferred to the Circuit Court [35] of Claiborne County for a new trial.
>
> ---
>
> "[35] This case should not be retried in equity. It is simply not an equity case. The Mississippi attachment in chancery jurisdictional provisions have been ruled unconstitutional by both federal courts in this State [citations omitted.] Since the action sounds in tort, and the injunctive aspects of the case are now moot, the case if remanded should properly be retried in circuit court as an action at law."

Appellants' footnote 35 was addressed solely to the issue of jurisdiction and venue upon retrial after a reversal of all parts of the Chancellor's Decree, including the injunction. Since the boycott has ended, the injunctive issues clearly would have been moot at such a retrial. Footnote 35 did *not* address the "mootness" of the injunction issued by the Chancellor in this case, but rather was premised upon the dissolution of that injunction.

In fact, the injunctive provisions of the Final Decree of August 19, 1976 remain in effect. Regarding these provisions, Appellants have never abandoned their appeal

but as they made clear in the conclusion to their opening brief, have consistently contended that the Chancellor's Final Decree should be reversed or, in the alternative, dissolved upon remand for a new trial. That Decree included, of course, a "permanent injunction, enjoining and prohibiting the defendants and all persons confederating with them from," *inter alia*, "[p]ersuading, soliciting, [and] advising any person to withdraw and withhold his or her patronage or to cease trading with the complainants." The quoted portion of the Decree, as well as certain of its other specifications, forbids Appellants from engaging in activities which, as we have demonstrated in our briefs, may not be prohibited consistent with the First Amendment. Appellants therefore respectfully petition this Court to rule favorably upon the issue raised by Appellants' Assignment of Error Eight.

Respectfully submitted,

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Individual Appellants

January 23, 1981

No. 81-202

Office - Supreme Court, U.S.
FILED
FEB 19 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 31, 1981
CERTIORARI GRANTED NOVEMBER 9, 1981

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IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 78,353

CLAIBORNE HARDWARE COMPANY, *et al.*
Complainants

vs.

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*
Defendants

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CLERK'S NOTE: Actual trial of this cause—as shown by Reporters' Transcript above—began June 11, 1973, and continued, at various times as outlined therein, until actual completion on March 12, 1974. Numerous pleadings were filed during said times. However, for purpose of clarification and continuity, the Transcript is included herein—without a break—and the balance of pleadings, as indexed below, are inserted in the record FOLLOWING CLOSE OF TRIAL. Filing date of each is indicated herein.

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Check of A. Spencer Gilbert III, Trust Account —for $100.00, deposited with Chancery Clerk —stating thereon—Re: NAACP et al Appeal— 10/4/76 16,499

[SUPREME COURT OF MISSISSIPPI]

[No. 51,488]

[Title Omitted]

[EXCERPTED DOCKET ENTRIES]

DATE	Filings—Proceedings
1979	
June 8	Motion and brief for leave to file brief for appellants exceeding 50 pages but not to exceed one hundred fifty pages
June 20	Motion for leave to file brief for appellants exceeding fifty pages but not to exceed one hundred fifty pages overruled
August 29	Brief of appellants, assignment of errors, statement of case
September 17	Motion to strike brief of appellants NAACP, etc., bf. in support
September 21	Answer & memo brief of NAACP and individual appellants in opposition to motion to strike
October 3	Motion to strike brief of appellants NAACP & all individual appellants overruled
1980	
January 11	Appellees' motion of brief for leave to file brief exceeding fifty pages
January 16	Brief and opposition of appellant NAACP and individual appellants to appellee's motion for leave to file brief exceeding fifty pages
January 25	On order dated 1/25/80 by Neville Patterson the motion of appellees for permission to file brief(s) not exceeding 100 pages in length is sustained . . . and the appellants' briefs will not be stricken for excessive pages and all

DATE	Filings—Proceedings
1980	
	appellants shall be permitted to file reply briefs which when combined with the total number of pages filed in the briefs in chief will not exceed a total of 100 pages in length for all appellants
February 15	Brief of appellee[s], statement of case
April 10	Rebuttal brief [of appellants]
August 15	Motion for time for oral argument of appellant, NAACP, et al.
August 18	Response to motion for enlargement of time for oral arg.
August 25	Motion for time for oral argument sustained one hour for appellant & one hour for appellee to be allowed
September 4	Argued and submitted
December 10	Opinion; affirmed in part & reversed and rendered in part on liability; reversed & rendered in part on damages; and reversed & remanded in part on damages
December 19	Petition for rehearing due on January 24, 1981 by court
1981	
January 23	Petition & brief for rehearing [of appellees]
January 23	Petition for rehearing & brief [of appellants]
March 4	Appellants' petition for rehearing denied, Appellees' petition for rehearing denied
October 14	Order amending judgment
November 13	Order from U.S. Supreme Court allowing certiorari

DATE	Filings—Proceedings
1981	
December 14	U.S. Supreme Court called Mr. Womack for original record. Called Spencer Gilbert for suggestion as to how transportation should be made & also as to method of payment of transportation fees. He advised that the record should be sent by Federal Express & that he would assume responsibility of direct payment to Federal Express. 85 vols. of record in 6 boxes picked up by Federal Express

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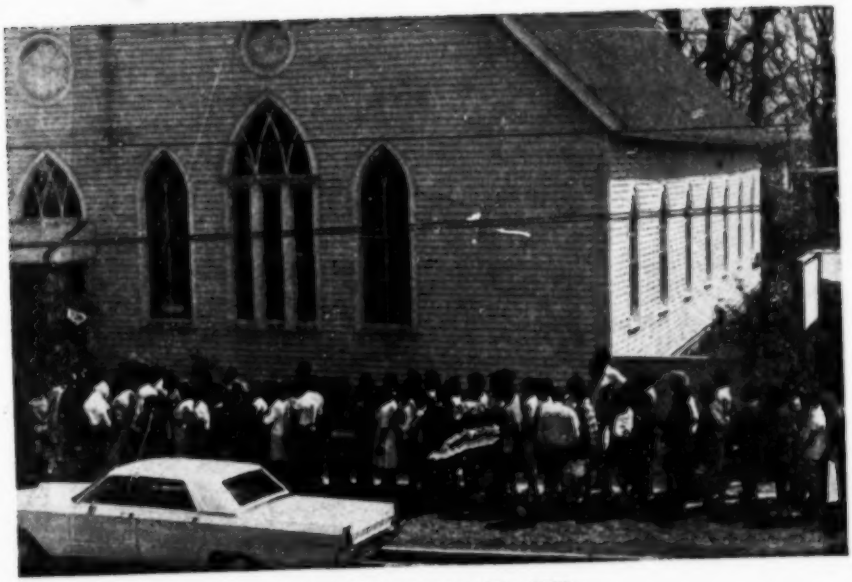
Exhibit C-7-6 (R. 947)

Exhibit C-7-8 (R. 948)

Exhibit C-7-10 (R. 949)

Exhibit C-7-20 (R. 952)



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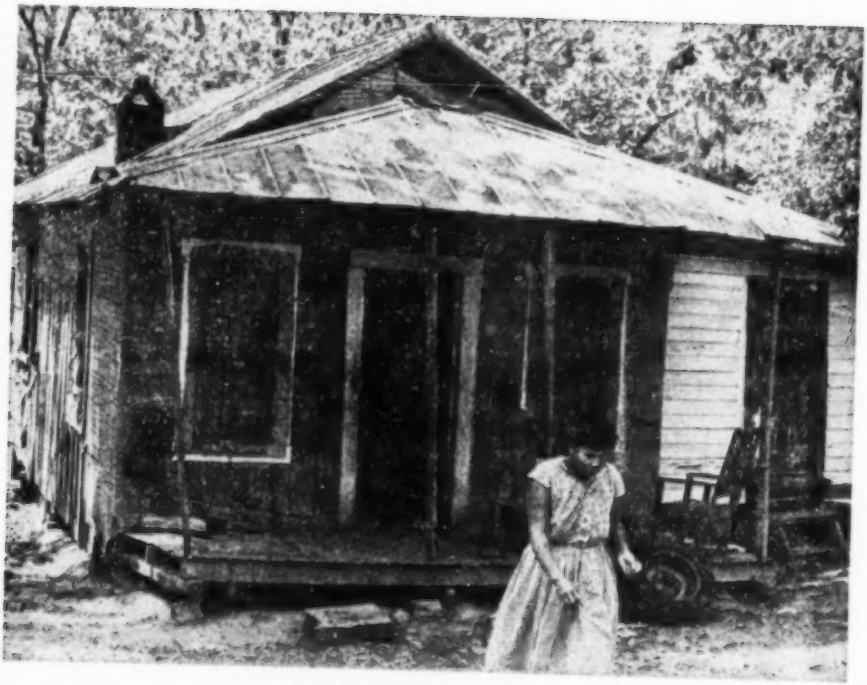

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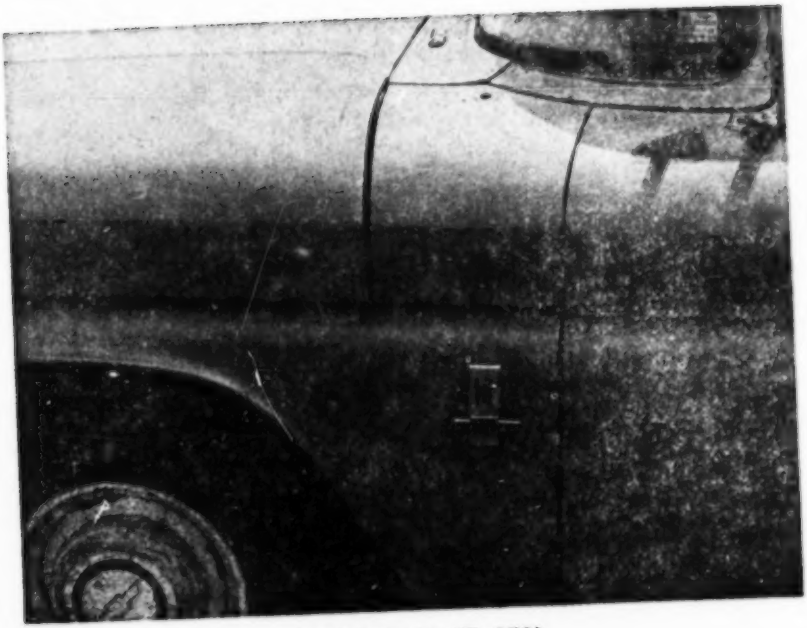

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Exhibit C-8-8 (R. 962)

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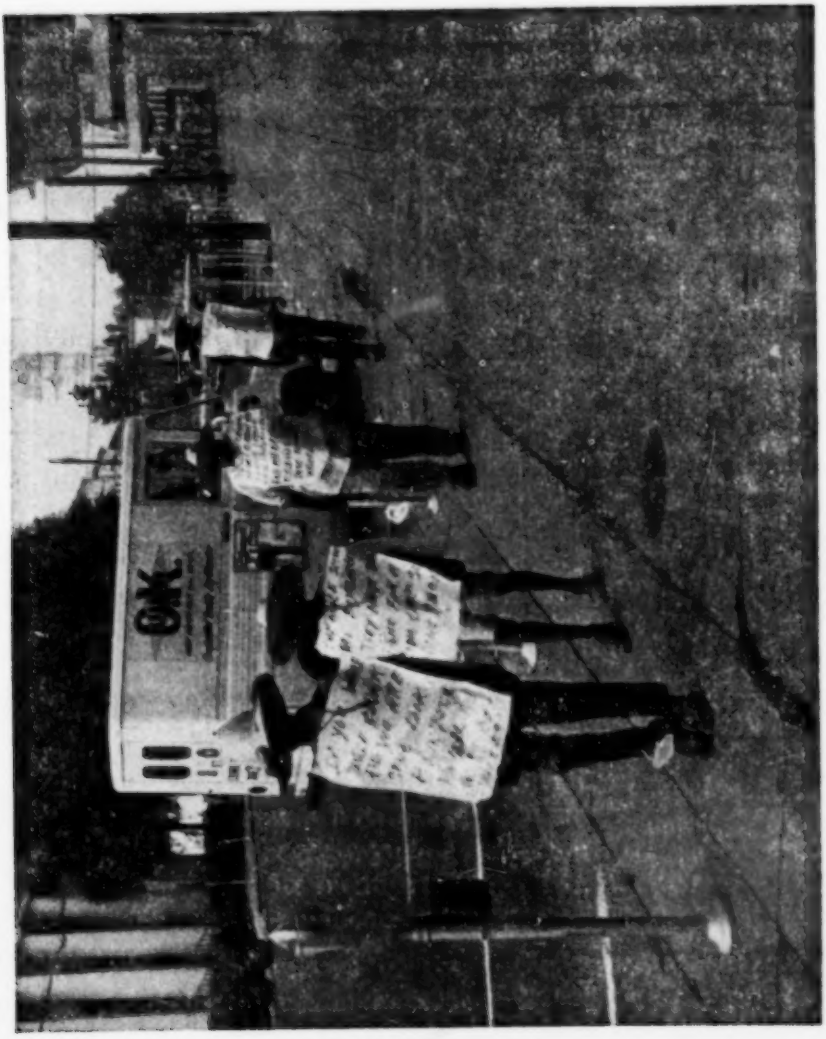

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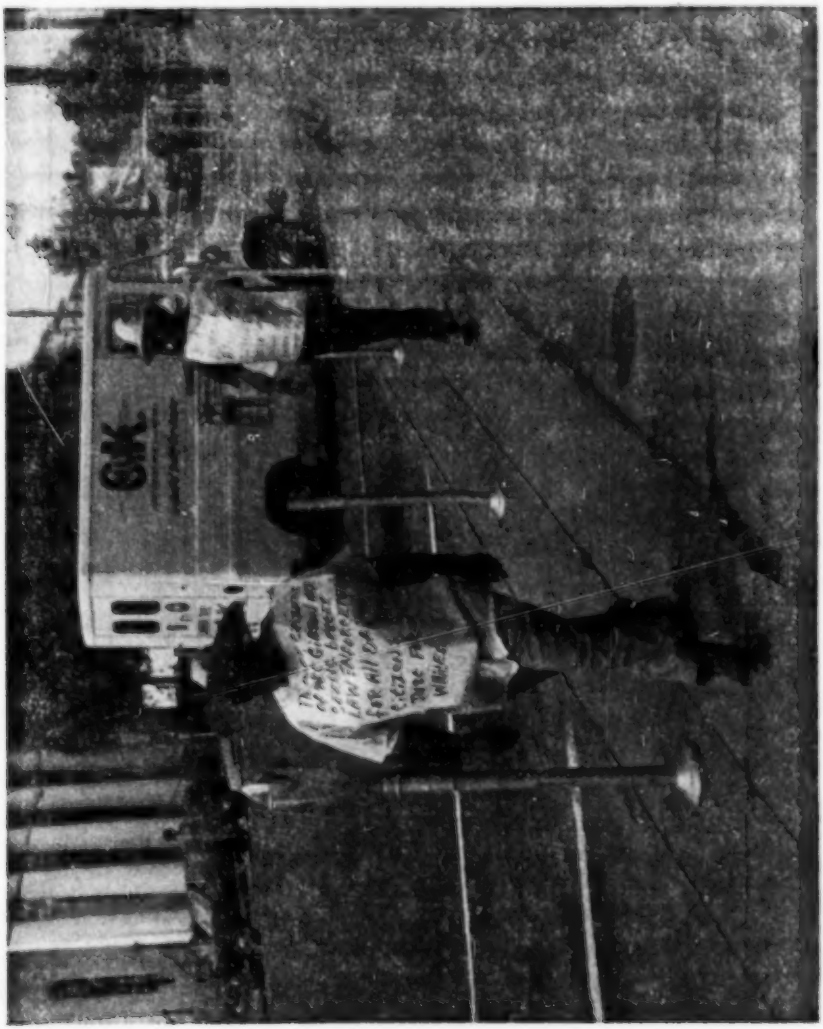

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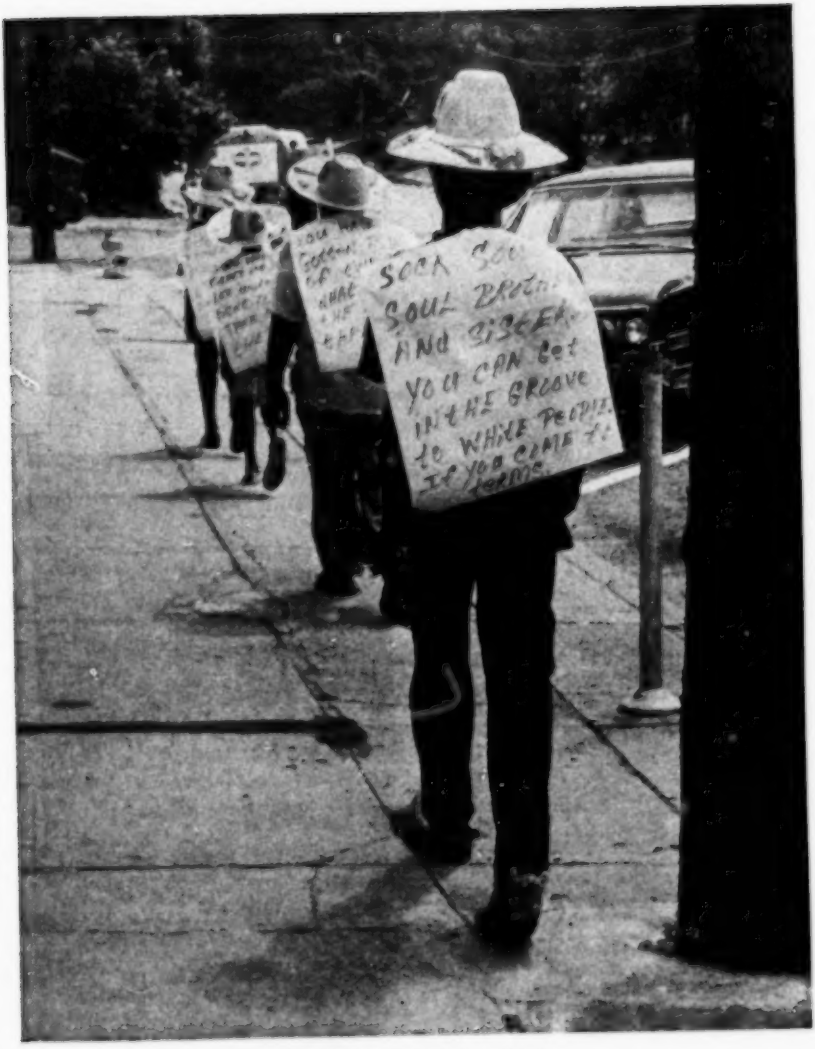

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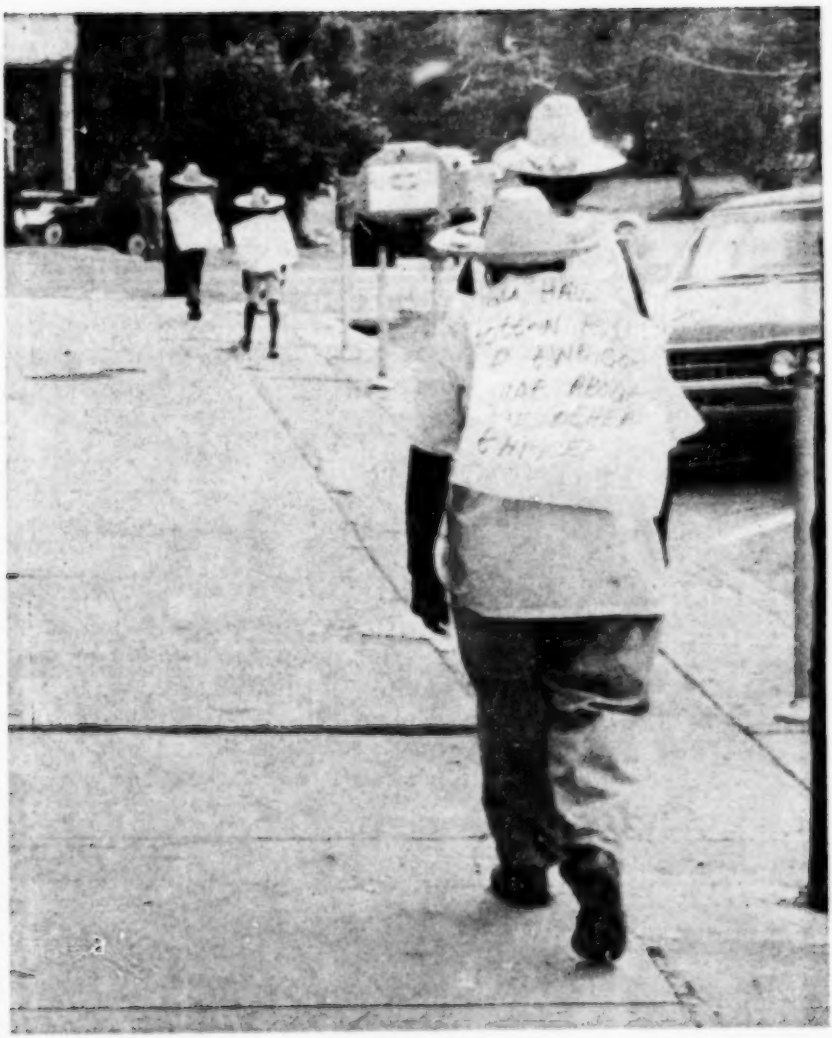

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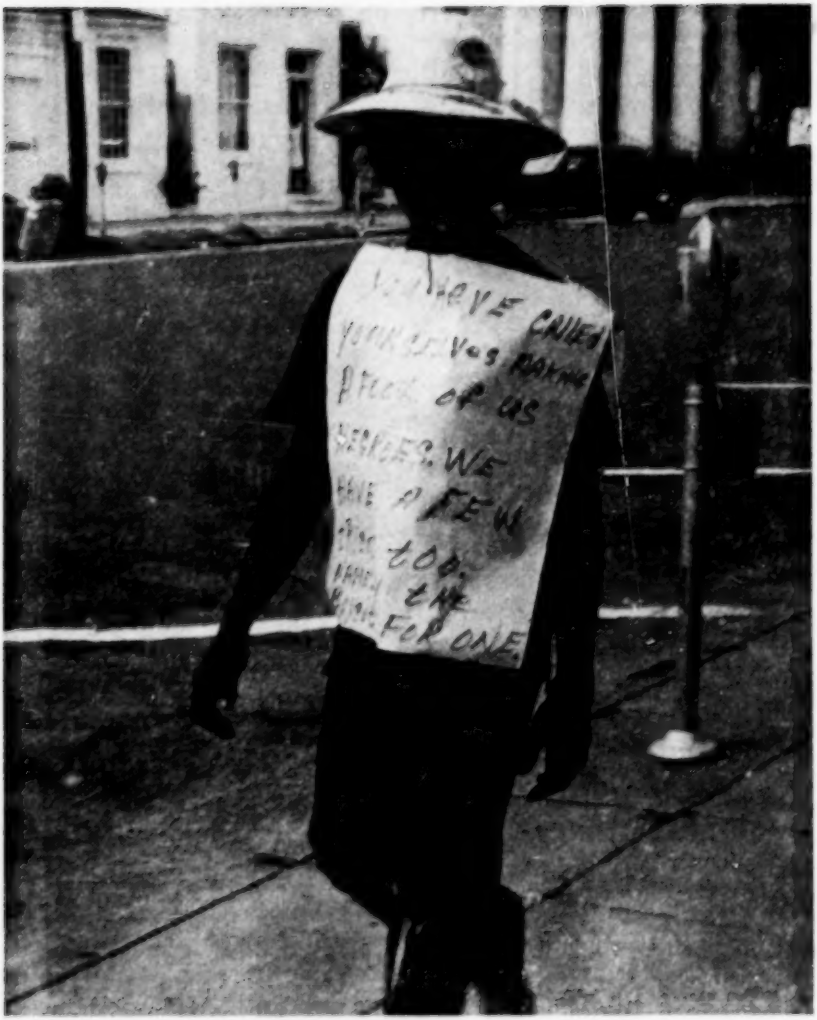

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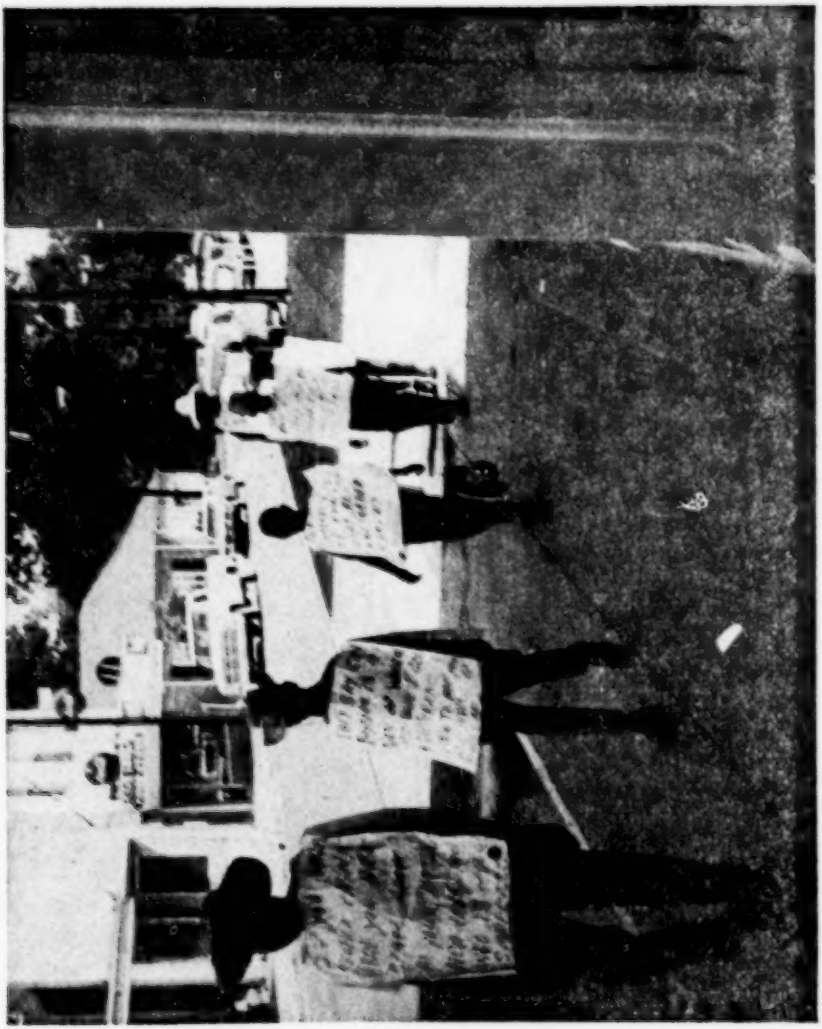

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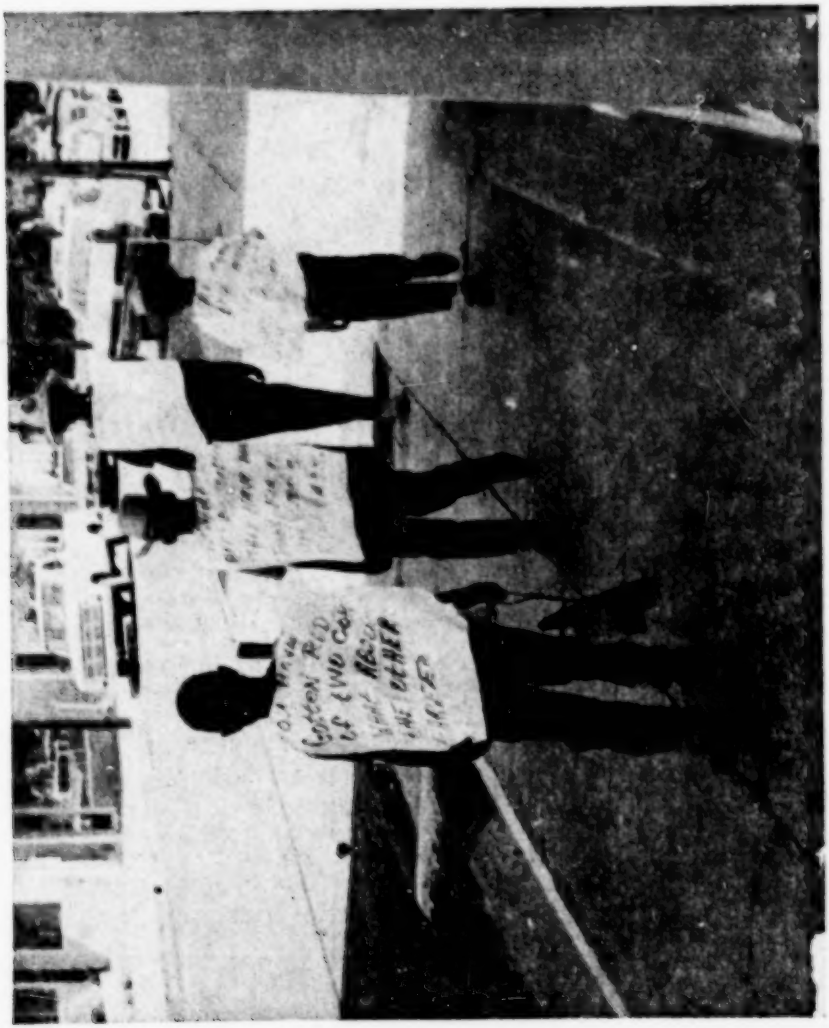

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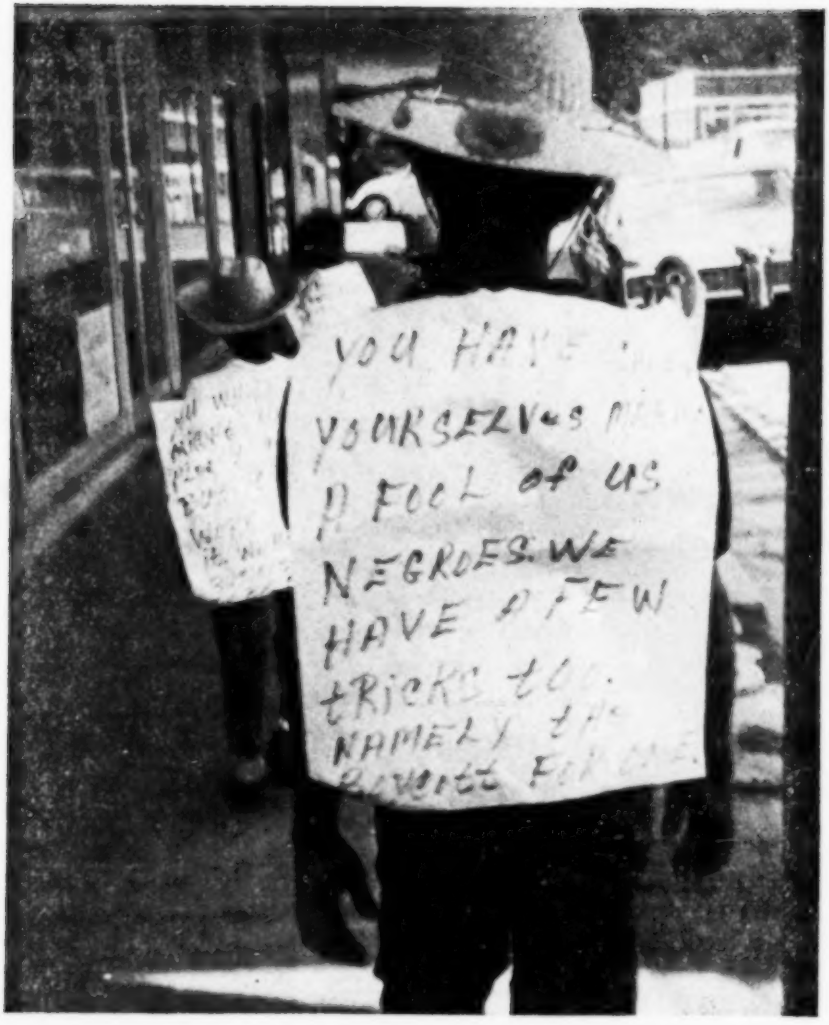

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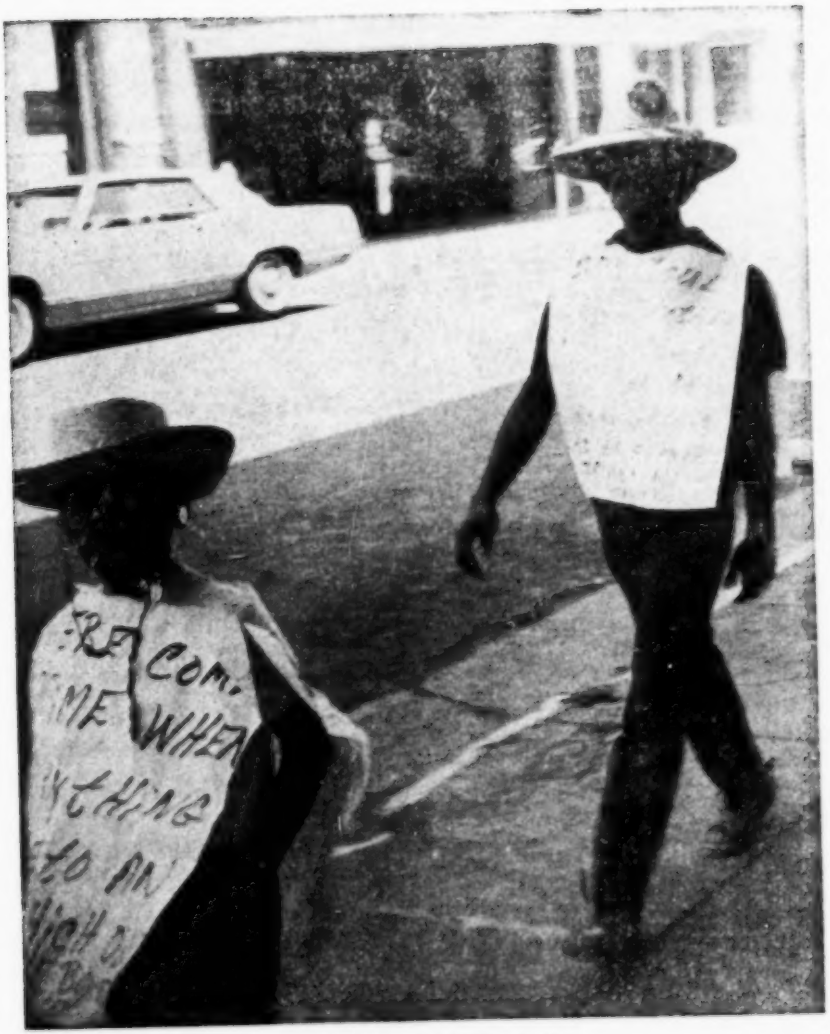

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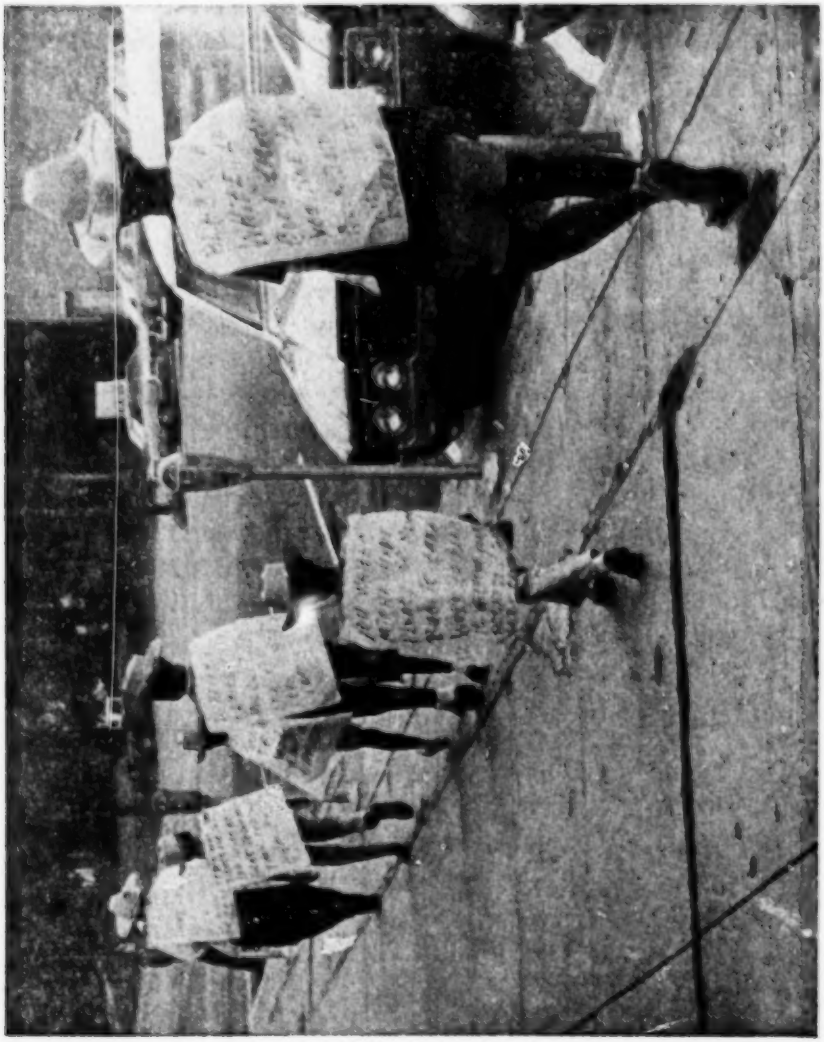

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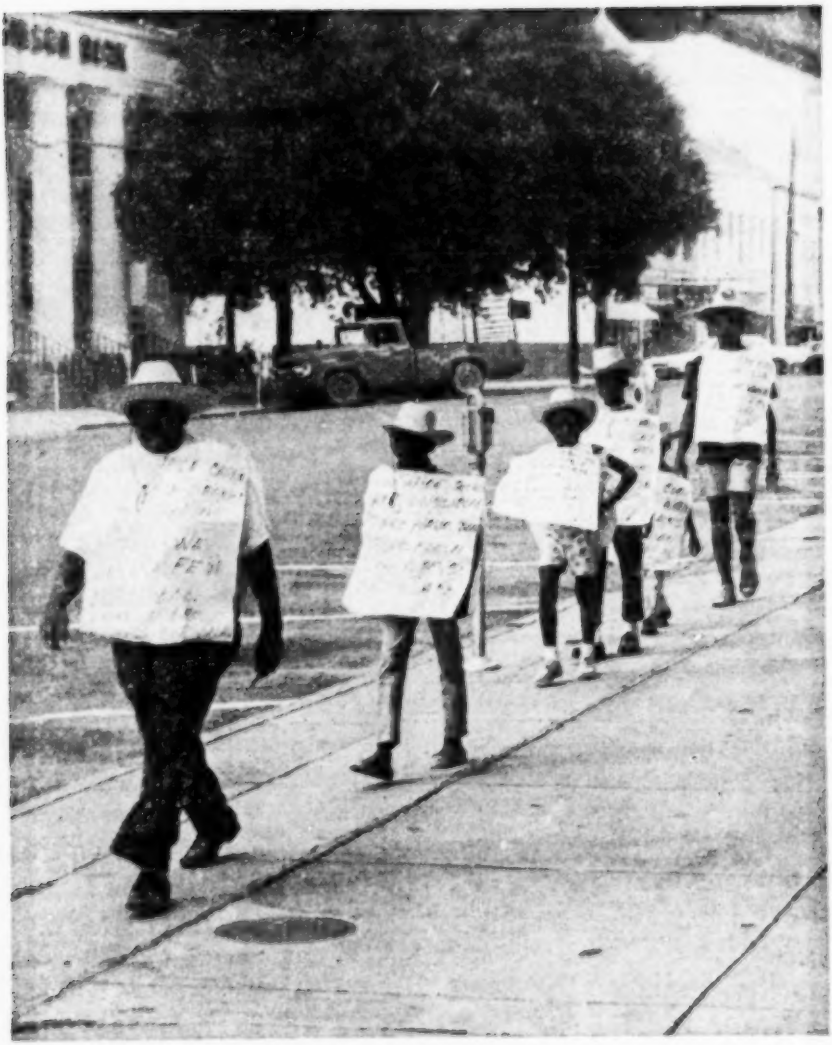

Exhibit C-11-4 (R. 986)

Exhibit C-12-1 (R. 989)

Exhibit C-12-2 (R. 989)

Exhibit C-12-7 (R. 992)

Exhibit C-17-1 (R. 1052)

Exhibit C-17-2 (R. 1052)

Exhibit C-17-3 (R. 1053)

[EXCERPTS OF TRIAL TRANSCRIPT]

[CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI]

[No. 78,353]

[Title Omitted]

[Witness James Hudson]

[DIRECT EXAMINATION]

[636] Q All right, let's find out what happened on April 1, 1966, with reference to this matter.

* * * *

[638] Q Did you hear Mr. Evers' speech?

A Quite a bit of it, yes, sir.

Q Can you tell the Court the gist of what he said in this speech?

A Of course, he called names. He called store names. He called individual names. The gist of it was, he told—

BY MR. ROYALS:

I object to him interpreting the speech. He can tell what he said.

BY THE COURT:

I don't think he could be called on to give a verbatim report of what Mr. Evers said, but I do think that he can testify as to his recollection of what Mr. Evers said. And I'm going to continue to let him so to do.

Q Go ahead.

A The main thing, of course, that concerned me and others was that he called for a complete boycott of all white merchants in Port Gibson, starting at one o'clock

that day, or thereafter. The speech was around one o'clock. And he called Piggly-Wiggly's name. He said, "You've seen us march now. It'll be a long time before you see us again back in your store." He said that any black person going in or patronizing one of the stores would be responsible to him. [639] He called quite a few names, as I said before.

Q Well, tell us the names that you can recall that he mentioned.

A He mentioned the big, fat, bald-headed sheriff of Claiborne County, Dan McCay. I know he mentioned M & M Super Stores' name. Jitney Jungle was a name he called.

Q What, if anything, did he say would happen to the black people who patronized these stores?

A At that particular speech, no, sir, he just told them not to go in and that they would have people there that—I believe he did say—he did say at that meeting that he would have people there watching and they would be reported at their meeting which they were having every Tuesday night if anyone went in and patronized one of the white stores.

* * * *

[647] A About six-thirty I was up at the front of the store getting the money out of the register; there were no other customers in the store at that time. My brother was working in the meat market. I was up front getting the money—I was taking money out of the cash register to lock up for the night. The front door was still open. No customers coming in. Ernest Darden, whom I've known for years—at that time I guess he was about 35 or 40 years old—and drove a truck, he came in the door and said, "Mr. James, will you cash my check?" I don't remember who he was working for at that [648] particular time. I said, "Sure." He said, "My wife is coming in to get the groceries. I'm glad I caught you. You were fixing to close." I said, "Yes, we usually close around seven o'clock." So, he said, "Will you cash my

check?" I said, "Sure." I had the cash register open and I cashed his check for, to the best of my recollection, around $64.00. And he and I both heard a commotion. We were right in the front door, which is about—the first checking stand is about five feet from the front plate glass window, which is about three and a half feet off of the curb, the sidewalk and then the curb. And he parked right in my front door there which is—his car. And he looked up and I looked up when we saw a commotion, and we looked out and his car was surrounded by Negro people; men and boys. So he said, "What's going on out there?"

Q Was there anyone sitting in his car?

A His wife and several other people, children and other people. I don't remember—the street lights were on but it was dark. But his wife was sitting on opposite the driver's side on the front seat. He had gotten out of the door on the driver's side because I saw him when he pulled up right in the door. I was standing there and I looked up. He opened the door and got out and came right in. This group came from across the street because they were still coming and milling around his car when he and I got out there.

Q What was across the street?

A There's a colored cafe called Killian Place, K-i-l-l-i-a-n, Killian Cafe. That's what it's referred to as. I don't know whether that's the official name or not.

Q Can you give us about the number of black people [649] that you saw coming from the cafe across the street and surrounding the car?

A Well, I would say at least 50. It was an area about as large from here inside these walls that were solid around the car and had the street blocked.

Q Can you give us an estimate about the distance from wall to wall in the courtroom?

A Forty feet. The street is about fifty feet wide, and they were more or less solid from curb to curb and around it.

Q Were they saying anything?

A Let's see—Calvin Williams, I believe he was the spokesman, he walked up and told—Ernest Darden, when he looked up and saw them, said, "What's going on? Let me go to the car and get my gun." Those were the words of Ernest Darden. I said, "No, Ernest." I said, "You may have been out of town working. They have a boycott on and they are not allowing the colored people to come in our stores." And he said, "I'll trade where I damn please. And I'm going out to the car and get my gun. My wife is coming in to buy groceries." So, Calvin Williams, when he went to the door, was standing at the driver's side, and he told him, said, "You can't go in there and buy groceries."

Q Did you hear this?

A Yes, sir. I followed him right to the front of his bumper of his car. And at the same time, coming across from the courthouse, which is about 150 or 175 feet, immediately northwest of my store, across the street is the courthouse, Sheriff Dan McCay, Chief of Police Doyle, several Highway [650] Patrolmen, who I did not know by name, and several auxiliary policemen came across when they saw the street was blocked and the people gathered around the car. They came up—

Q Who blocked the street?

A This crowd of colored people that came from the side of the cafe and were standing out. Of course, the cars stopped; weren't too many cars moving in Port Gibson at that time of night. The police and Highway Patrol and Sheriff Dan McCay came across the street. They were, I assume, about in front of the courthouse. Anyway, they came out about the time I got out there. They had seen them gathering and were coming across.

Q Was there any noise?

A They were not real noisy but talking like a crowd will do. But when I walked out, Calvin Williams was talking through the door to Ernest Darden's wife. He told her, "You can't go in." She said, "I'm fixing to go

get groceries." Whether or not she had gotten out of the car and gotten back in I'm not real sure. So, when Ernest came up they got to arguing, pushing a little bit, not too much. About that time the sheriff and his deputy came up. My pickup was parked in front of the store. Ernest's was parked in front of the door. The store is about forty feet wide. He was parked in a parking place right in front of the double doors on the front side. My pickup was parked in the parking place about forty feet in the last parking place in front of the store; about twenty to forty feet apart. The sheriff and the Highway Patrolmen and all the policemen came in and stood, or leaned right against my side of the pickup, which was about 20 or 30 feet from his car.

[651] Q Tell us what Calvin Williams said to Ernest Darden?

A He said, "That store is boycotted. You can't go in there. You can't buy groceries in there." And Ernest said, "I'll buy groceries where I damn please. It's my money and I'll buy them here if I want to." So I spoke up and I said, "Ernest, I don't want to get you into trouble. You are welcome to come in the store. The door is open." I said, "The sheriff is here. Nobody is going to bother you if you want to come in the store. But," I said, "it's left up to you. I'm not telling you what to do." I asked the sheriff, I said, "Is it all right if he goes in the store?" The sheriff told Ernest, said, "Now you can go in that store if you want. I'm not going to interfere with anything. I'll see, if you want to go in that store and shop, I will escort you in and see that you want to."

So that's about all I really can say that I understood. There was milling and talking and at that time some other people in the crowd were talking and hollering, and it got kind of rowdy. And the police kind of got around—

Q What do you mean "kind of rowdy" now?

A Well, I say "rowdy", I didn't actually see anybody hit anybody over the head or shoot anybody or anything.

But that many people right there crowding, pushing and shoving among themselves was a little rowdy. They were talking, yak-yaking back and forth with me and with the police.

Q Let me ask you this now: Did you hear anybody say when the sheriff told him that he would see that they didn't bother him if he wanted to go into the store, did you hear any statement made, say, "Yeah, but the—"

[652] BY MR. BANKS:

Objection, Your Honor, to leading.

BY THE COURT:

You're objecting on what ground?

BY MR. BANKS:

I believe Mr. Pyles is leading the witness.

BY THE COURT:

I think so. You can ask him if he heard anything but you can't put words in the witness' mouth.

A If I heard the words that I can remember or distinguish? Is that what you're asking me?

Q I haven't finished my question. I was trying to ask you if anything was said about whether the man was—

BY MR. BANKS:

I object, Your Honor.

BY MR. CARTER:

Your Honor, he's still trying to get that question out.

BY THE COURT:

You can ask him if anything was said to the sheriff, Mr. Pyles.

Q Well, did anybody make any statement in response to the sheriff's statement that he could go in the store and shop?

A Yes, sir. I cannot identify who made it out of the crowd.

Q I didn't ask you that. I just want to know if you heard anything?

A Yes, sir, I did.

[653] Q All right. What did you hear him say?

BY MR. BANKS:

Object to relevancy, Your Honor, if he can't identify the person who made the statement.

BY THE COURT:

I think that's correct, Mr. Pyles. I will have to sustain the objection unless this person can be identified.

BY MR. PYLES:

May I make my record on it then?

BY THE COURT:

Yes, sir. In other words, are you making an offer of proof here?

BY MR. PYLES:

Yes, sir.

BY THE COURT:

All right, then, you can dictate into the record what this witness would have testified to, but you can't ask the witness.

BY MR. PYLES:

All right. If this witness were allowed to testify, he would state that some black man in the crowd said to the sheriff, when he told him he could go into

the store and no one would bother him, the black man said, "They can't sleep with him tonight," which I take, Your Honor, to be a threat.

BY MR. BANKS:

I object, Your Honor, to his interpretation.

[654] BY THE COURT:

Objection sustained.

* * * * *

[659] Q Was it during the year 1966 that you saw Calvin Williams drilling these people dressed in black hats?

A I believe that the "Black Hats" or the "Deacons for Defense", which we call them both ways, came into being, I believe, after the death of Martin Luther King, which was April of '68. So, I believe it was during the year '68. We had them on the street, these representatives, or whoever, or whatever they were, from the time of the boycott. So I guess they were organized. They used two or three on each corner and two or three in front of each business. Evidently they had some kind of organization from the start. They weren't wearing black hats and straw hats during the first year, I don't believe, of the boycott.

Q When did they start to wear the black hats?

A It was sometime during the year '68.

Q Now with reference to the drilling, describe what [660] was done, how many people were there, and just tell us what went on?

A The particular time that I saw myself standing in my back door looking out from my back door to the back street is about 160 feet, and to the side street, where the parking lot opens on the side street on Fair Street is about 110 feet right out standing right on the back stoop of my store. And I would say there were sixteen or eighteen boys from, say, age sixteen—fifteen to twenty years old—twenty-one maybe or twenty-two.

Q All right. What—

A Well, the particular time I saw them, Calvin Williams was instructing them and they had some rifles. I don't know whether they were real rifles or mock rifles, or something. They had some rifles and this time they had some leggings on. They didn't have hard hats but had a helmet-type thing on like a—I was in the Navy; I don't know what the Army calls them—helmet, I guess.

Q Were they steel or not?

A I do not know. I didn't feel one.

Q Did you hear Calvin Williams say anything to them?

A I could hear him from there say, "Stand at attention and walk like this and that," and I walked back in the store after that. I know of some other conversations about it but I didn't see it.

Q Are you familiar with the term "close order drill"?

A Yes, sir. I was a lieutenant in the Navy, retired.

Q Would you tell us now if there was a type of "close order drill"?

[661] A Yes, sir. I saw them march. I did not hear the exact command he was giving them after they come to attention. They marched—I would call it marching—for 30 to 40 feet back and fourth on a parking lot. I watched them for maybe two or three turns and then, of course, as I said, I went back in the store.

Q How often did you see Calvin Williams drilling this group of people?

A The only time that I remember specifically seeing Calvin with them, I saw him a good many times here on the streets with them, but the only time I remember seeing him was that one time. Then James Whitney was drilling them at the same place, whether it was the same men or not I don't know. I believe the time that I saw James Whitney they didn't have on any leggings but they did have on black straw hats. They were lined up back there once or twice when James Whitney was in

charge of the group, standing out in front and talking to them.

Q What was the color of James Whitney and these "Deacons of Defense", "Black Hats", or whatever you call them?

A All I saw were colored. Negroes.

Q Black?

A Yes, sir.

Q Did you ever see Calvin Williams with this same group of people out there on the streets anywhere in Port Gibson?

A Yes, sir. I believe he marched—I say I believe, I know he marched down the next block—I don't know what number—let's see, be number six. 600 block—he marched down with three or four of the Black Hats. I saw them one time [662] as I was going down the street and they marched, from where I saw, about three-fourths of the block. I say march, they were walking single file, and he was with them.

Q Just go ahead and tell what you know.

A Well, they were walking down the street and they had their guns and Calvin was with them.

BY THE COURT:

Wait just a moment. All right, Mr. Royals.

BY MR. ROYALS:

Your Honor, the dates are very important on these things. I object unless he can say when he saw Calvin Williams with them.

BY THE COURT:

To the best of your recollection, Mr. Hudson, please state about when this was.

A This was during the year '68; that's about as close as I can put it.

BY THE COURT:

All right, sir.

Q What kind of arms did you see them with on the street?

A To me they looked like rifles.

Q Did you ever examine them?

A No, sir. I passed by them, you know, with them on the same sidewalk.

Q Are you familiar with a M-1 rifle having been in the Navy?

A Yes, sir. I've put them together.

Q Were they M-1 rifles?

A Not the Mark 14 I knew, no, sir. Mark 4. I don't [663] know what they were.

Q Describe the rifles to us.

A Well, I'll say the barrel would be about 26 or 28 inches long and had a stock, a wooden stock and a 26 to 28-inch barrel on it. Whether it was an automatic feeding, bolt action or single shot, I'm not sure.

Q What was the composition of the barrel if you could see it?

A Steel.

Q Now when you would see Calvin Williams with these people on the street, what was he doing with them besides just marching them up and down the street?

A Well, —

Q Was he posting them anywhere?

A They would be posted. I didn't see him tell them to stop off on a block. There would be two or three on each block or corner of some of the Black Hats. I didn't see him tell them to stop on a block.

BY MR. BANKS:

We're a little late, Your Honor, but I would like to get Mr. Pyles to stop leading the witness.

BY THE COURT:

All right, Mr. Pyles, let's don't lead the witness.

BY MR. PYLES:

I'll do the best I can, Your Honor. I didn't think I was, but maybe I was.

Q When you would see these particular people standing around on the corner, or wherever they were standing, would they be armed?

[664] A They were at one or two different times, but the police stopped it.

Q Was this all during the year 1968?

A Yes, sir.

Q Now did you ever see these people around anywhere in 1969, 1970, '71 and '72?

A The group that I knew as the Black Hats?

Q Yes.

A Yes, sir, they stayed on the streets up until sometime in 1970 I know because there were several instances. I would say the boycott was fading out in '70 and it was being tried to be put back on, and they were publishing names of stores and things that they were called selective buying then. And they were back on the street. They were back on the street as late as 1970.

Q Now can you identify any of the defendants other than Calvin Williams and this man named Whitney that you were talking about? Did you ever see anybody working with this group?

A In the group and working with them or both?

Q Well, both.

A His name is Shields, I believe it's Rudolph—Rudolph Shields.

Q What did you see Rudolph Shields do?

A That would take a few days to say what all Rudolph did.

Q Well, tell us about it.

A I had a face to face confrontation with Rudolph Shields about him beating up the colored man that worked —that was still working for me during the boycott.

* * * *

[667] Q Could you just tell us you saw him beating up William Holt?

A Okay. I saw him hit him one time and knock him [668] down and then William Holt's daddy came over there and took him off. I drove on past, parked on the corner in front of the store and Shields, I hollered at him, I said, "Will you come up here? I want to talk to you." Rudy Shields was supposed to be one of the leaders of the Black Hats and whom I saw later drilling them again, too. Rudolph Shields.

Q What was your conversation with Shields about beating up your employee? Why was he beating him up?

A I said, "What are you doing jumping on William Holt? He works for me and I pay him and you have nothing to do with him." He said, "He's been running to you telling you everything that we have decided that we are going to try; that you knew we were trying to come to church that day. He delivered groceries to colored people out of your store and we are going to stop it."

Q What did you say then to him? Do you remember?

A Yes, sir. I'd rather not say exactly what I said. I told him if I saw it happen again, then I was going to become involved in it, with myself personally.

Q I take it —

A I didn't threaten him, no, sir.

Q — being a Navy man that you used somewhat stronger language than that?

A Yes, sir.

Q Well, did you ever see Shields molesting or doing anything else to your employee?

A No.

Q During 1966 now besides Calvin Williams, Whitney and Shields, did you see any other of the defendants that

you can call by name or recognize involved with these individuals [669] that you've referred to as the Black Hats or in any other incident in keeping the people out of the white stores?

A Yes, sir. There was one Mack Bailey, a James Whitney a name, Marcus Jones, Smith, I can't call his first name—

Q Dee Smith?

A Dee Smith, D-e-e Smith, John Henry Walker, Eddie Lee Walls, Walls or Wells—Eddie Lee Wells, I believe his name is, Eddie Lee Wells, Tullos Brown, Walter Griffin—.

BY MR. WILSON:

Your Honor, may I ask for some clarification, if he's testifying with people who were involved with the Black Hats. That's all I want to know.

BY MR. PYLES:

I understood that he's testifying to that, that those are the people he recognized.

BY MR. WILSON:

Right. That's what I wanted to know.

Q Anyone else now?

A There were quite a few others that I know, or knew that I know, but I can't call their name offhand. Let's see—Aaron Brown was one of the other boys that I remember. Mack Bailey and his brother was another Bailey —James Bailey I believe is his name, the other Bailey. There was a long list of them but it's been six or seven years ago.

Q Now what did these individuals you have named do with reference to the Black Hats?

A They wore them; they stood on the corners and we called them—I say "we", I and other people called them "Watchers", "Black Hats" or "Black Deacons". They would stand [670] on each corner and if somebody started in a store, they would holler at them. Well, we'd come up and I have seen them catch an individual by the arm.

Q Now would they say anything to white people from going in the stores or not?

A No, sir. I don't remember anything that I can recall saying anything directly to a white individual.

* * * *

[671] Q Did you see them anywhere else, before any other businesses? Did they have any in front of your business?

A Yes, sir, I had some in front of my business practically all the time. On both corners and right in front; sometimes marching on the sidewalk right in front. Of course, a time or two we had one or two of them arrested for blocking. But as long as they kept moving they were all right.

Q Now when you say "blocking", tell us what you mean by that?

A When I say what?

Q Blocking. You said you had some arrested for blocking?

A They would stand right in the door and not let white or anybody come in. They would just stand in the door, three or four right in the double doors of the store.

Q Three or four what?

A Three or four of those Black Hats would just stand there, wouldn't move.

Q Did they stand in front of your door?

A Yes, sir, on the sidewalk.

Q Did you see them stand in front of anybody else's door?

A Yes, sir, I've seen them stand in front of other people's doors.

Q Can you name some of the other doors they stood in front of?

A I've seen them stand in front of Western Auto Store in particular. Norman Ellis' Five & Ten, I believe that's what he called it—Norman Ellis Department Store.

[672] Q All right. What other Stores?

A Jitney Jungle Store and the M & M. Now the M & M and Jitney Jungle have a little parking lot and

I've seen them on one occasion that they were on that that I saw them.

Q Saw them on the parking lot of the M & M?

A Yes, sir. No, I saw them on several occasions. I was trying to think of one time when they arrested them.

Q What were they doing on the parking lot?

A Just blocking.

Q Blocking what?

A The door, right by the door. They would just stand there. Of course, I have pushed them before, you know, pushed them out of the way.

Q What would they say to you?

A Well, they'd say, you know, bad words or cuss words. When there was a group of them they wouldn't always say, but they would say, like, "You're not going to be home with your wife tonight," or, "Your daughter will be downtown."

Q Now I think this is important and I want you to tell the Court, regardless of the language in here—most of us have been in the service, except for this young lady—would you tell us exactly what these people would say to you when you'd push them out of the way or ask them to get out of the way?

A Well, on more than one occasion I've heard one of them say, "When you're down at the store tonight, I'll go see your wife." And I had another incident with one that my daughter—I had three teenage daughters at that time—and one of them was walking up the street and one grabbed her [673] by the arm and said, "Come on go with me."

Q One of these Black Hats?

A Yes, sir.

Q What did you do about it?

A Well, I went up on the corner myself and the two that were standing there—I don't know whether I threatened them or not, but I told them I would excuse them that one time, that I'd been living there all my life and had never had any trouble and didn't want to get into

trouble, but if it ever happened again there would be trouble.

Q Did you recognize these people? Did you know who they were?

A Oh, yes, sir. One of them was Marcus Jones and—

BY MR. BANKS:

Your Honor, I object. I don't see what all of this has to do with the boycott. I don't see what all this has to do with his business. Object on the grounds of relevancy.

BY MR. PYLES:

It has everything to do with the boycott.

BY THE COURT:

I'm going to overrule that objection. I think that this is logically relevant.

Q Was there anybody else that you saw besides Marcus Jones that you could identify among these Black Hats?

A No, sir.

BY MR. WILSON:

Your Honor, for clarification, I would like to know whether or not the witness' testimony is [674] that Marcus Jones was a person who threatened to see his wife or the person who grabbed his daughter by the arm.

BY THE COURT:

If you know who these people were, you can state who they were.

A Marcus Jones grabbed my daughter by the arm. That's what my daughter said.

BY MR. CARTER:

I'm sorry, I didn't hear that last. You said your daughter said—

A That's what my daughter said. She went back with me and pointed him out.

BY MR. CARTER:

I move to strike that testimony.

BY THE COURT:

All right, this is hearsay and I'm going to sustain the motion to strike.

BY MR. PYLES:

Your Honor, there is a rule of law that when one person does a conspiracy of this sort that it relates to everyone else.

BY THE COURT:

That's not the point he's objecting on, Mr. Pyles. His objection goes to this, that this gentleman has testified that someone by the name of Marcus Jones grabbed his teenage daughter by the arm. The way he knows this, he said, was because his daughter told him this.

[675] BY MR. PYLES:

I understood him to say that she went back with him and pointed this man out. And then is when he said he was going to overlook it this time. I asked him that.

BY THE COURT:

All right, suppose we clarify this. Of course, if it's just something his daughter told him, the objection is well taken.

BY MR. WILSON:

Your Honor, unless the witness viewed the incident himself, whether she pointed this person out to

him and told him, and he never saw the person, it's still hearsay. Unless he witnessed the incident himself; however that he learned about it other than by firsthand, it's hearsay.

BY THE COURT:

No. What Mr. Pyles was talking about is that he had a conversation with the individual. That was my understanding. Now if that is true, then we will go into that, if this man was a member of these Black Hats. Now I'm not forgetting, Mr. Wilson, that you have a continuing objection on bringing these people in, and I will rule on that later. But as for right now, if these individuals, any of them, had a conversation with this gentleman, then I'm going to let it in evidence.

Let's back up just a moment now. The objection was made by Mr. Carter on the grounds [67] that this gentleman didn't see anyone grab his daughter by the arm and that he was simply going on—

A No, sir, I didn't say that.

BY THE COURT:

Sir?

A I saw him grab—I saw a person grab.

BY THE COURT:

Do you know who that person was?

A Yes, sir.

BY THE COURT:

All right, then go ahead. Let's hear it. See, that wasn't the way you answered the question.

• • • •

[678] Q Were you present there and your daughter present there and other people present there and Marcus Jones when she pointed him out?

A Yes, sir.

Q As the one who grabbed her?

A Yes, sir.

Q Did Marcus Jones say anything to you? Did he deny it?

A He just kind of smirked. No, sir, he didn't say anything then because he saw I was mad.

Q Did any of the rest of them there?

A No, sir, they kind of walked off.

Q How were these people dressed?

A They had on a black hat. Just ordinary regular clothing; nothing out of the ordinary about their clothing.

Q How did the people who were stationed as guards and things on the corner and in front of stores, how did they dress?

A They weren't always dressed with black hats. There'd be some old ones.

Q Were they all at times dressed with black hats?

[679] A Some of them, yes, sir. Right. And they were known as "Enforcers". Charles Evers told us that they were his enforcers in the speech when he talked to us and when he talked out on the sidewalk at the front of the courthouse, and I listened, and he said, "These are my enforcers. You'll see them around with black hats on, and they will enforce it." That's what I'm telling you.

Q Enforce what?

A What I'm telling you, not to go in the stores.

Q When was this speech?

A I don't know which particular one. One of the several, many, that he made in front of the courthouse.

Q Did you hear him make that speech?

A I heard a lot of them. Some parts I couldn't hear all of the speech for the noise, on every one.

Q Did you hear him tell—

A I've heard him refer to the Black Hats as his enforcers more than one time himself.

Q You heard him say that?

A Yes, sir.

Q What were these Black Hats going to enforce?

A "If any of the colored people went in any white store, they would get their name, we would have them read out at our meeting at the church, "First Baptist Church," and you will be taken care of." He never did say how. I don't know.

Q Now you said that you were concerned about your daughter walking down the streets of Port Gibson after 1966?

A Yes, sir.

Q Why were you concerned?

[680] A Of the many instances and of my own self walking up and down and had to push or go around a bunch of blacks; young blacks. The older people, and the women and the children they were—

Q What did they do on the sidewalk?

A They would be walking two or three abreast, or just be crowding the sidewalk. You'd have to get out in the street to go around them.

Q Didn't they let you by?

A No, sir.

Q Had this happened before April 1, 1966, when Charles Evers—

A Not to any—

Q Listen to my question now. Before Charles Evers put the boycott on?

A Not to my knowledge. I didn't see an instance of it.

Q Prior to that time you had never known of an instance?

A No, sir.

Q Since that time have you known of instances where these people blocked the sidewalks and make you get off in the street off the sidewalks?

A Hundreds.

Q Is it still going on?

A No, sir.

Q When did it stop?

A It eased off in '70. There were still some instances of it during '70, but not as crowded and not as much as it was during '66 and '68 and early part of '69 years.

• • • •

[684] Q What is this I show you, Mr. Hudson?

A (Looking at document)* This is a—I believe this is a copy that I may have had; looks like I made a note on it at the time. This is a handbill or a "dodger" that they call it, some of the watchers that were standing on the street handed out. I don't know the name of the one that handed this one. After the boycott started, going up [685] and down the streets, well, most of the merchants were armed, carried guns or something. Going back and forth to the bank and different things, these people would be on the street, what we call the Watchers then. They would crowd, a lot of times you had to push by. And they were many times handing out papers or circulars. This particular one, there was two or three or a group of boys standing on the corner and I had seven colored men and boys working for me when the boycott started and I kept them on and laid off one of the whites. I kept the colored on. And usually when I went to the bank, one of them walked with me or ahead of me and one behind me as I would go up and down the street. When the one in front of me went by this group, he handed him this piece of paper. I know it was this piece because I was walking eight or ten feet behind him and I reached out my hand for one—he was passing them out like people pass out handbills, advertisements—and he did them like that (demonstrating) and didn't give me one. And the one that worked for me walking behind me, he handed him one. So, we were right within a block or two of the store. When we got on in the store, I asked one of them, said, "Let me see what he gave you." And this was this piece of paper here.

• • • •

[* Exhibit C-3, R. 692 (J.A. 18).]

[CROSS EXAMINATION]

* * * *

[793] BY THE COURT:

He's asking you to please refer to the Bill of Complaint. In each of these categories he's going to ask you who in that list of defendants committed these acts. So, he's asking you the same as he asked you on 5-a. He's now asking you which of these made public speeches.

A All right. Charles Evers, Calvin Williams, Walter Griffin, Walter L. Griffin, Sr., Jim Ellis, Jr., James Whitney, George Henry Walker. Those are the ones.

Q Mr. Hudson, maybe we can get an answer with regard to all of those in one question. Would you give me the names of those of the group who made speeches at what we might call a rally where there were a lot of people present, and exclude the ones you say talked to people in front of your store.

[794] A Calvin Williams, Charles Evers, George Henry Walker, and I had left Eddie Walls, Jr. off that I remember making a public speech, too—so he covered both categories—Eddie Walls, Jr.

Q And the others on the list would be people who spoke in front of your store and you happened to hear them.

A Right, or a group around on the street corner.

Q When you use the term "group", give us an estimate of how many?

A Fifteen or twenty.

Q Mr. Hudson, was the content of these speeches pretty much the same?

A Well, they were the same in fact that they were calling for a boycott on the merchants for things that we couldn't have anything to do with. You know, couldn't help. Some of them were pretty fiery; some of them were threatening the people. In one instance they'd say, "We'll

call your name out in church at the meeting Tuesday night and our Black Hats will take care of you." You know, that type.

Q I had hoped to avoid doing this, but I guess you'll have to tell me, Mr. Hudson, if you can, which of the people you named there threatened people in the course of their speeches?

A Threatened them?

Q Yes.

A Charles Evers; Calvin Williams.

Q Can you tell me if it was a specific threat or a general threat? Did he threaten specific people?

A He threatened the people—no, sir, you mean called names?

[795] Q Yes.

A He threatened the people that would go in the white stores is all he threatened.

Q Can you, as best you recall, give us the language he used?

A Well, let's see, to the best of my knowledge, on April the 5th Calvin Williams marched—had some pickets out—is that what you want to know?

Q I thought we were discussing about Mr. Evers.

A Oh, all right, Evers?

Q I want the specific language that he used to threaten the people, if you recall?

A Okay, the first speeech he had on April the 1st at the Courthouse, I don't know whether I can quote it verbatim or not—

Q We realize that.

A —because he's hard to quote verbatim. He said that "we don't want any black person going in any white business in Claiborne County. When we leave this courthouse, we're going back to the church and then we're going home. And I mean go home. We will have our boys out on the street to take care of you if you go in the stores." That's pretty verbatim from one speech. The first one that was done.

Q Can you relate to us the portions of any future speeches where people were threatened?

A Where people were threatened by Charles Evers?

Q Right.

A Well—

Q Let me ask you this: In the subsequent speeches, were they pretty much the same—

[796] A Yes.

Q —which you characterized as a threat?

A Right. Except in some instances he called out names. I'm not going to try to recall the names.

• • • •

[797] Q Well, let me ask you this: with regard to Rudy Shields, tell me what specific conduct he engaged in that led you to charge him with sending mass pickets in the streets?

A You want me to tell what he did?

Q Yes.

A Well, he sent mass pickets. He picketed. He made public speeches. He threatened. He stationed guards. He [798] guarded himself, used himself as a guard. He threatened customers in my presence. He tore up goods in my presence of people who had bought in there. Just about anything I can think of. You want me to continue with the list?

Q It's all those activities he did that you charged him with sending out mass pickets in the streets?

A Yes.

Q Now with regard to Paragraph 5-b, you said you wanted to include Mr. Shields' name in that also?

A Yes, that's right. Public speeches, right. Mass, small and large.

Q And you just testified he threatened customers in your presence?

A Right.

Q Will you give me the language that he used in the speeches where he threatened customers?

A Uh, a particular sentence?

Q I guess I could best divide it this way: You said he made speeches to rallies, large rallies and also the small.

A Yes.

Q Can you tell me what statements he used in his speeches to large gatherings?

A In the large speeches or mass or public speeches, he at times would say, "If I catch you shopping, any of my men catch you shopping, we'll be down to your house tonight. You won't have a house tomorrow. We'll burn your house. When we get through throwing bricks on it, you'll know we mean business."

[799] Q And that would be generally true of the other speeches?

A Right.

Q Now you're saying he made threats—

A Right.

Q I assume you mean to individual customers?

A Yes.

Q Can you tell me what language he used?

A "If I catch you going in that G.D. store, I'm going to stomp your G.D.A."

Q Can you give me the name of the customer who he was addressing?

A I can give you the name of a white customer that he told that to.

Q Who?

A Mr. Lee Allen, Jr.

Q Can you give me the approximate date when that occurred?

A The date of April 1, 1966.

• • • •

[801] Q I may not understood you, but I think you said something about them coming back and getting pickets?

A Yes.

Q We were talking about guards.

A Well, guards, I'm using the same name; pickets and guards, they're standing there. Sometimes they had a sign and sometimes they didn't. So, to me a guard was standing there guarding or watching my front door, see. They would put them out and pick them up and bring them back. Same way they would do if they had a sign carrying. Same difference.

Q If people were marching up and down in front of your store with picket signs, they were guarding your store. Is that correct?

A Well, it would be two different groups of them at times. You know, it would be two or three maybe leaning up against a light post or parking meter in front of the store while they were marching and while they'd be picketing with signs. See, some of both. And more times, both. Two different groups, you know. Somebody with a sign and somebody just standing there watching to stop somebody if they started in a store. Now the guards didn't have to stop too much because they were there, they knew they were there, and they made their presence known so there wasn't too many people that [802] tried. They'd come by like they were going to try, but they didn't grab the handle of the door and try to open it too many times.

Q Were the guards stationed there daily?

A Yes, sir, daily.

Q And as of April 1 they were there daily?

A From that time on, yes.

Q Until when?

A Let's see, there was a period, I don't recall exactly, sometime during maybe '69 that they were taken off for a few weeks or few months. But upon until '70, the guards—I don't say every day from April 1, 1966, 365 days for four or five years—but up until 1970.

Q Can you tell us, Mr. Hudson, when they stopped being there every day and were there thereafter every other day and less frequently than that up until 1970?

A I'd say the latter part of '69 they were there pretty much every day. They were there through '68 practically every day. And the latter part of '68 it kind of slacked off. They were there pretty much, I'll say, until the first of 1970. I don't mean every hour of every day. At least some somewhere every day.

* * * *

[803] Q Mr. Hudson, drawing your attention to the second clause in Paragraph 5-c, can you give me the names of any of the guards who physically stopped customers?

A Marcus Jones, Dee Smith, McLawrence Bailey, Rudy Shields, Charles Evers, Calvin Williams, Buster Barber—

BY MR. PYLES:

Your Honor, maybe the witness could go down the list and pick them out that way.

BY THE COURT:

Okay, if he can.

A You want me to go down the list?

Q Any way you want to.

Q It's a lot of names, a lot of people and a lot of faces and a long time ago, and I want to be sure I got them in my mind that I saw them do this before I name them. Now we're working on the ones that I have actually seen threaten—

Q Physically stopped customers, or prospective customers, from entering the premises.

A Right. Calvin Bailey, Joseph Barber—

BY THE COURT:

Is Joseph Barber the same as—

A Buster Barber, yes, sir.

BY THE COURT:

All right.

A Let's see, I've named some—Marcus Jones, Rudy Shields, Albert Weathers, Eddie Lee Wells, Calvin Williams, Dee Smith, James Ellis, Jr. Right now that's all the names that come to me that I'm sure about that I saw.

[804] Q Mr. Hudson, I want you to try as best you can to give me a date and the circumstances with regard to Calvin Bailey's stopping someone from entering the premises of white merchants?

A I can't recall.

* * * *

Q Your response to my question is that you cannot give me a date of the circumstances allegedly including Calvin Bailey?

A Right. I have seen him actually take a purchase out of a person's hand, but I can't give you the date nor the name of the person. In fact, I have seen him take several. But I just can't tell you the date.

Q Can you tell me approximately when it was?

A I would say 1966, early part of '66. Sometime during the month of April, 1966, the first time. But that's as close as I would try to pinpoint it.

* * * *

[807] Q James Bailey took packages, or at least one package away from a customer?

A Correct.

Q Can you tell me when that happened?

A No.

Q Can you tell me where it happened?

A In front of the Piggly-Wiggly store.

Q Was the customer leaving your store?

A Correct.

* * * *

[808] Q On any other occasion did you see James Bailey take a package from a customer?

A No, sir, not to my knowledge.

Q Can you tell me whether or not you ever saw Calvin Bailey take a package from a customer?

A Yes, I did.

Q Will you tell me when that incident occurred?

A Sometime during the month of April of '66.

Q Can you tell me where it happened?

A On the corner of Main and Fair Street, 500 block.

Q Do you recall the name of the customer?

A No, I don't.

Q Do you know whose business premises she was leaving; which of the complainants?

A I'm not sure. It was a brown bag. I didn't see her come out of the store; no identification on the bag.

Q You don't know if she had been in the premises of one of the complainants?

A No, I do not.

Q On any other occasion did you see Calvin Bailey take a bag from a customer or some person?

A Not to my knowledge.

Q Did you ever see McLawrence Bailey take a bag from a person?

A Once or twice that I can remember.

Q On the first occasion, can you tell me when that was?

A It would have been during the month of April of '66.

[809] Q Do you recall the name of the customer or person involved in that?

A No.

Q Can you tell me where that occurred?

A That happened in front of Michael Ellis Department Store. Let's see, the name of that street—Walnut, about the 200 block of Walnut Street. We don't go by numbers. I don't know.

Q Can you tell me where you were located physically when you witnessed this?

A Walking up the street.

Q Approximately how far were you from the customer when McLaurin Bailey took the bag from him or her?

A About fifty feet from the first time I saw it.

Q This is the first incident in April of 1966?

A To my best recollection.

Q Was there any policemen in the vicinity when that occurred?

A I'm not certain but I belive that he was arrested right then. I don't know if that's the time or not, but I believe it was then. The warrant.

Q Did you witness the signing of the warrant for his arrest?

A I didn't witness or sign the warrant. Somebody else did. I saw them arrest him.

Q There on the spot shortly after the act was committed?

A Correct.

• • • •

[811] Q You say there was a second incident involving—

A There were several incidents.

Q —with regard to McLawrence Bailey?

A Right.

Q There were several more involving him?

A Correct.

Q That you saw?

A Correct.

Q Can you tell me approximately where that occurred?

A One occurred on, I don't remember the time, but it occurred on Fair Street that I witnessed.

Q Do you know whether the person who had the bag had been on the premises of one of the complainants?

A I assume they had. I couldn't swear.

Q But you do not know?

A No, sir.

Q With regard to any of the other incidents, do you know for a fact that the people involved had been in the premises of any of the complainants?

A I know of one, Roosevelt Wyatt. You mean other people that—

Q Someone that McLawrence Bailey took a bag from?

A Oh, no, not McLawrence, no, sir.

Q With regard to Eddie Lee Wells, did he take bags from anyone?

A I don't remember seeing him take any bags particularly away from someone. I've seen him on numerous occasions, you know, guard. But actually taking something, I can't say.

Q You realize, Mr. Hudson, that this list we have [812] includes some people who took bags and some who didn't?

A Right.

Q I'm trying to get the ones who did. Did Buster Barber take bags from anyone?

A No.

Q And did Charles Evers?

A I'm trying to think if he took the bag from a lady in front of—I don't believe, no, sir, he didn't take the bag. He told her to put it down.

Q Did Albert Weathers take bags from anyone?

A Not to my knowledge or that I witnessed.

Q Did James Ellis, Jr., take bags from anyone?

A James Ellis or Jim Ellis would be the same. Not that I saw.

Q Did Dee Smith take bags from anyone?

A Correct.

Q Can you tell me on what occasion you witnessed him take a bag from someone?

A (Looking at notes) On Friday, May 2, 1969, about 4:30 in the afternoon.

Q Can you tell me where this occurred?

A Right in front of the Piggly-Wiggly store, 525 Main and Market Street.

Q Can you tell me where you were when you observed this?

A Standing on the sidewalk about three feet from the three people.

Q Can you give me the name of the customer or customers involved?

A Roosevelt, Shorty, Wyatt.

[813] Q Is this the incident that you testified with regard to yesterday, Mr. Hudson?

A Yes, sir.

Q As I recall your testimony yesterday, correct me if I'm not right, your testimony was that they threatened to take the bag and Mr. Wyatt challenged them to do so and they backed off?

A Right.

Q So they did not take the bag from him; they threatened to do so?

A I stand corrected. I didn't see them take it out of his hand.

Q Was there any other incident with Dee Smith who took a bag?

A No, sir. Not that I witnessed, no, sir.

Q Did Marcus Jones, to your knowledge, ever take a bag?

A No, sir.

Q To your knowledge, Mr. Hudson, did Rudy Shields ever take a bag from anyone?

A I would estimate that I saw around twenty different times that he grabbed a bag from somebody's hand. Not any that I know that came out of my store. But seeing him on the streets, I've seen him snatch a bag. Where the bag came from, I don't know.

Q As far as you know the bag did not come out of the business premises of any of the complainants?

A Not that I can prove.

* * * *

[822] Q Can you describe other specific incidents involving Mr. Calvin Williams other than the Darden incident?

A Offhand I can't remember.

* * * *

A I said the only thing I could remember was the Ernest Darden instance. But, also, I considered the speeches he made—one speech he made that I referred to on the 5th of April of '66 as being all of this "g", plus. Not to a specific customer but to a group or mass.

Q That's your conclusion from what he said?

A Yes.

Q Tell me, Mr. Hudson, approximately how many people were there when Mr. Williams made this speech?

A It was estimated around 300, and I estimate it to be about 300.

Q And at what stage of his speech did he make statements which you would consider vilification, slander, abuse? At the beginning, middle, toward the end? Do you recall?

A No, sir. I just remember that he marched down the street to the courthouse with a good many following and he talked on. He stood on the steps of the courthouse and that was the thing I made the note of that stuck in my mind, was that he said, "If you trade in them stores, any of you, we'll know who they are and my boys will get you." You know, [823] to me and to everybody else that was kind of the climax of the speech.

* * * *

[824] Q With regard to Paragraph 5-j, can you give me the names of the defendants who went to the homes of certain customers and sought to induce them not to trade with the complainants using threats and coercion?

A Could I refer to another note there on that?

Q Certainly you may.

A Let me see if I can find it. (Looking at document) This was a note I made of a telephone conversation that

I recognized the lady's voice when she called me on the phone and said that one James Bailey threatened her. She had been in the store that afternoon. He threatened to burn her house down. I suggested she report it to the Sheriff. That's a note on January 27, 1970.

Q Did this occur during a visit to someone's home? The part of the complaint dealing with having to do with [825] certain of the defendants called at the home of customers?

A Oh, you mean called at the homes. You mean, they went. I'm sorry. I was taking it for a telephone call.

Q Mr. Hudson, I'm not trying to interpret your complaint. Is what you had in mind when you verified this complaint was telephone calls as well as personal visits?

A Well, if you'll bear with me. I'm really not a lawyer and I've got to be sure that I'm clear, too. (Reading) Well, I took it to mean they called at the home in person or called over the telephone. You correct me if I'm mistaken.

Q Do you know of your own personal knowledge, exclusing [sic] things that were reported to you by someone else, defendants who went to the homes or were you there when a defendant called by telephone?

A No, sir, I was not present.

* * * *

[828] Q I hand you, Mr. Hudson, a document which has been marked Complainant's Exhibit C-3. I think you testified yesterday that you obtained that from one of your employees?

A Yes, sir.

Q I think you testified it was Mr. Holt?

A Yes, sir.

Q Can you tell me whether you've ever seen another copy of that document, other copies?

A You mean one like this or the exact copy?

Q Other copies like that?

A At several meetings there were a lot passed around something on this order. I don't know of any particular

one. I'm sure that this one was passed around. And this is [829] the only one that I've had a copy of. But several of them were passed around. One of them was a picture of a police dog attacking. At the meetings we had every week something like this would be passed around for everybody to see, more or less to keep what was going on, you know.

Q You say they were passed around at meetings, what meetings?

A At both the biracial committee when we were meeting and, also, the white merchants met every—the colored people met on Tuesday night and the white merchants met every Friday night—business people, individuals, white people—met every Friday night at the courthouse for, I don't remember, a year or two every Friday night. General meetings and discussions.

Q Now once you received that document, did you undertake any sort of investigation to determine its origins?

A No, I didn't. It was turned over—The sheriff had a copy and they were asked if they would look in and see if there was anything. No, sir, I don't know anything else about it other than just seeing it.

Q Did you just say the sheriff had a copy of it?

A I'm sure that he did. He was at all our meetings and I'm sure he saw a copy of it. I say that all I did was just save a copy like I did a paper of anything else that I picked up concerning anything that was going on about the boycott at that time. Clippings and such. And that just happened to be one of the things that I saved.

Q Would it be accurate to say, Mr. Hudson, that you saw that document in the hands of white people as frequently as you've ever seen it in the hands of black peo ple?

[830] A Well, I saw a copy like that passed around to a group of white people. There were probably a hundred people there.

Q And you have no idea as to its origin?
A No.
Q You never made any investigation of it?
A No. No way.
Q As to its origin?
A No.

BY MR. ROYALS:

Your Honor, at this time we move on behalf of the defendants to strike this exhibit C-3 from the record based on the testimony of this witness.

BY THE COURT:

The motion is denied.

Q Mr. Hudson, you testified yesterday of some activities, marching activities, something engaged in by a group that has been referred to variously as Black Hats, Enforcers, Watchers, and so forth. Is that correct?
A Correct.
Q I think you, also, testified that at the time described by you yesterday they were being drilled by Mr. Calvin Williams?
A At one time I believe I saw him.
Q And directed on another occasion by Mr. Whitney?
A Whitney is right. Correct. On another occasion Mr. Shields. I don't know whether I told that yesterday or not. I don't remember.
Q You, also, testified that at the time, I believe, and correct me if I'm wrong, that you saw them being drilled [831] by Mr. Williams that they had guns, or something that appeared to be guns?
A That's right. Each time that I referred to.
Q On every occasion when you saw them drilling?
A The three times that I referred to, right.
Q Can you tell me approximately how many people were in the group?
A I'd say from eight of the smallest to eighteen. The three groups that I saw at three different times as few

as eight on one of those times and as many as eighteen at one time.

Q Did you, also, yesterday, Mr. Hudson, testify that the first occasion when you saw them drilling with guns was shortly after the assassination of Dr. King?

A I don't recall.

Q Do you recall then approximately when was the first time you saw them drilling with arms?

A No, sir, I don't recall. I may have said yesterday in some events leading up to it that put a calendar in my mind, but I can't recall.

Q Can you give us an approximation?

A I would say no, sir. It would be the year—I believe it would have been the year '67 the first time. Of course, this three times that I'm talking about just happened to be a time that I saw them, and it could have been a year's difference between the two times. See? It was during this period of four or five-year period. So, I would hesitate to try to pinpoint the date or even the year.

Q Now on each occasion when you saw them drilling, were they on the parking lot down behind your store?

[832] A The one time that Calvin Williams was drilling them, or marching with them, they marched down one block south of me on Main Street on the sidewalk. I think there were seven or eight then that had guns that marched with them. They marched down to the corner of Fair and Market, turned East and went down about a half a block and that put them in the vicinity right behind my store on that block. And they marched on in there and doing a little, I call it, close; all of them marching.

Q What's the closest you were ever to them, Mr. Hudson?

A I was standing out the front door of the store looking down, and from the front door of my store down to that corner that they turned and went down is about 108 feet, and across the street 40 feet—and they came

across the street and came down that street—so about 150 feet. Then I went to the back of the store, which is about 110 feet long, and looked out the back door where they, you know, came in on the vacant lot and I watched them a few minutes.

Q How far were they away at the time you went to the back of the store?

A From the back of my store to the sidewalk on that side is between 60, 75 or 100 feet all the way to the sidewalk. They were between the sidewalk and my back door.

Q And did each of them have a gun?

A I wouldn't say each one of them had, every one of them. I'd say the majority of them had a gun. I believe they all did. I'm not real sure.

Q You're certain that they were guns and not a facsimile of guns?

[833] A I'm not certain as to the ones they had.

* * * *

[836] Q On the occasion when you saw these people being drilled by Calvin Williams, were you ever close enough to them to state without doubt they were carrying arms?

A Real guns?

Q Yes.

A No, sir.

Q Would the same be true for the occasion when they were being drilled by Rudolph Shields and by James Whitney?

A Same would be true.

* * * *

[Witness Dan McKay]

[DIRECT TESTIMONY]

[1012] Q Were you present during the course of the speech made there at the courthouse after the marchers had gone down Market Street?

A I was.

Q Who was the principal speaker?

A Charles Evers.

Q What, if anything, was said in regard to a boycott in his speech?

A He told them the boycott was on all white merchants. He told them except Stampley's Store which was outside of town, that they could trade there. They could trade at Salter's Service Station for their gasoline. They left one drugstore open, I believe, at the time and told them—I'm not sure if they left any drugstores open at that time or not. And told them if they needed medicine there would be free transportation to take them—

[1013] BY MR. PETERS:

If it please the Court, the best evidence of Mr. Evers' speech would be the speech itself.

BY THE COURT:

Well, that is going to be time consuming to replay that tape to this witness. I am going to overrule the objection.

BY MR. PETERS:

Well, it has been admitted as evidence and the best evidence of the speech would be the tape of the speech.

BY THE COURT:

The tape as introduced was the speech of April 19, 1969. That was a meeting in front of the Claiborne County Courthouse. The speech that Mr. Shell is talking about presently, as I understand it, is the speech of April 1, 1966. You may proceed.

BY MR. SHELL (Continuing):

Q Go ahead.

A He told them to boycott all the white merchants, get out of town, get off the streets and told them they could trade at Stampley's Grocery Store which is ap-

proximately two miles out of town and I believe a Shell Service Station. I'm not sure if they left a drugstore open or not. But they could trade with no other white merchants.

Q Did he make any comment about what would happen if they did not observe the boycott?

A He did.

Q What did he say?

[1014] A He said, "If you break the boycott your own people will break your necks."

Q How large a crowd did he have there that heard this speech?

A I would say 400.

* * * *

[1015] Q Did anything unusual occur after that April 1st, 1966 date?

A That day?

Q That day.

A Well, some people came into town that didn't know the boycott was on. They were shocked [sic]. They told them not to trade.

BY MR. PETERS:

If it please the Court, we request that this witness say who was stopped, who stopped him and this sort of thing. And also a particular date this happened.

BY MR. PYLES (Continuing):

Q Do you know who the people were that stopped these potential customers?

A I don't know all of them.

Q Do you know any of them?

A Yes, sir. I know one in particular.

Q Name him.

A Ernest Dardin.

[1016] Q What time did this occur?

A Maybe around 6:30 in the afternoon.

Q Was Ernest Dardin one that did the stopping or one that was stopped?

A He was stopped.

Q Would you relate this incident to us.

A I was standing in front of the courthouse and several Highway Patrolmen were there with me and this car drove up in front of the Piggly-Wiggly. This man, Ernest Dardin and his wife and children were in the car. He got out, apparently fixing to go in the Piggly-Wiggly and a group of black people walked across the street and I saw James Hudson come out of the store and looked like some arguing back and forth so myself and four or five Highway Patrolmen walked over in front of the Piggly-Wiggly. Ernest Dardin apparently didn't know anything about the boycott being on because Calvin Williams told him the boycott was on and that he couldn't trade with the white merchants. At that time I told him if he wanted to go in I would see that nothing happened to him. It was a group of people but I remember distinctly that Calvin Williams was doing the talking. And he said, "You can go in with him and get your groceries but these white folks ain't gonna sleep with you." So he decided not to buy his groceries and got in his car and left.

Q Was this remark made in a threatening manner or what?

A Like I said, he told him, "The sheriff can go in with you and get your groceries but he's not gonna sleep with you."

* * * *

[1091] Q Sheriff, would you bring the tape over here and play it on this machine where everybody in the courtroom can hear it?

(Tape was put on recorder and played out in the courtroom for all to hear as clear as possible. The following is a transcript of the tape as transcribed to the best of my ability. This tape was originally introduced into Evidence as Exhibit C-13 for Identification to the testimony of David Bethea in the

above cause on June 20, 1973. Any notation in parenthesis is said by someone in the audience or denotes participation of audience.)

BY CHARLES EVERS:

At this time we are not going to deviate from our usual procedure, one that got us this far in government in Claiborne County and the rest of these counties, and that is non-violent but consistent and determined way to tell the truth. (Amen) At this time we are going to have our Honorable President, the Reverend Walls, and he will pray for us and then we will sing a couple of verses of Amazing Grace [1092] immediately after he has finished.

(Prayer by Reverend Walls followed by the singing of Amazing Grace.)

BY CHARLES EVERS:

Thank you very much. We want our white friends here to know what we tell them happens to be so. Thank you for having the courage to walk down those streets with us. We thank you for letting our white brethren know that guns and bullets ain't gonna stop us. (No) (No) We thank you for letting our white brothers know that Port Gibson ain't none of their town. (Amen) (Applause) That Port Gibson is all of our town. (Applause) That black folks, red folks, Chinese and Japanese alike (Yeah) (That's right.), that we are going to have our share. (Yeah, we are.)

I want to thank you for coming out this afternoon because you could have done like our foreparents did, kill a nigger and all of us make a run for the hills. (Yeah) (Applause) Thank God that somehow or another we ain't running no more. (We ain't running no more.) (Yeah) (Applause) We ain't running to no hills, we are going to run free. (That's right.) (Yeah) (Applause) (Amen) We're gonna grab and squeeze all the hell out of it. (Much applause) That's wrong. (Amen) (Tell

'em about it, tell 'em about it.) That's wrong, and wrong can't prevail. (Amen)

Last night, young folks, you made a mistake. That's all this redblooded, hungry, trigger-happy, racist, bigot figures want you to do. (Amen) Write it down like I say it. Are you going for a rock so they can throw lead at you? (That's right.) If you do that you are foolish. (Right) You can't win that way. (No, you can't.) Don't throw rocks [1093] at 'em, don't shoot 'em, that is all they know to do. That's right. (Amen) Look at me now and tell me, no, white brothers, you ain't gonna turn us around. (Yea) (Amen) (That's right.) Look him in the eye and tell him you ain't gonna kill him like you killed us. (That's right.) (Yeah) We're just going to make damn sure you stop killing us. (Much applause)

We got to also tell him that we know you think that if they continue to kill us it's going to stop us. (It ain't gonna stop us.) We got news for you. (We ain't dead yet.) We have just begun. (Right) (Applause) That white folks and that big, black burly nigger (Yeah) (Yeah) (Applause) that big, black burly nigger (Applause) we want to make sure that he knows too that we are not going to allow no racists in this town to hand pick some nigger to kill us openly.

We want our white brethren to know that Highway Patrolmens, you don't have to be here. (That's right.) (Applause) If the sheriff of this county and the mayor of this town had any kind of relationship they wouldn't need to call in nobody. (Loud applause) (Yea) Well, white folks, we just want to tell you something. (That's right.) You may as well understand that black folks are going to be heard in Claiborne County. (Yea) (Tell 'em again.) (Applause) You fooled us last year. That's all right, white folks. You fooled us two years ago and we elected a sheriff we knowed that wasn't going to protect us. (Right) But that's all right. (That's all right, Sheriff.) We are coming at you again. (That's right.) This

time we are going to beat you. Oh, we're gonna beat you this time. (Loud Applause.)

[1094] We are going to beat you because we know you can't trick us no more. (Yea) You are not going to be able to fool us by getting somebody to give us a drink of whiskey no more. (Applause) You ain't gonna be able to fool us by somebody giving us a few dollars no more. (Applause) We are gonna take your money and drink with you and then we're gonna (Applause) vote against you. Then we are going to elect a sheriff in this county and a sheriff that is responsible, that won't have to run and grab the telephone and call up the blood-thirsty highway patrol when he gets ready (Yeah) to come in and beat innocent folks down to the ground for no cause. (That's right.) (Applause) (Boo) We are going to elect a sheriff that can call his deputies and represent black leaders in the community and stop whatever problem there is. (Yeah) (That's right.)

Then we are going to do more than that. The white merchants of this town are so wrapped up in the power structure here, since you love your Police Department so well, since you support them so well (Yeah), we are going to let them buy your dirty clothes and your filthy, rotten groceries.

Oh, no, white folks, we ain't going to shoot you with no bullet. (That's right.) We are going to shoot you with our ballots and with our bucks. (Yea) (That's right.) We are going to take away from you the thing that you have had over us all these years. (Yeah) Political power and economic power. While you kill our brothers and our sisters and rape our wives and our friends. (Yeah) You're guilty. You're guilty because you don't care a thing about anybody. (Yes.) And when you go and let a big, black burly nigger like you get on the police force (Yea) go down and grab another black [1095] brother's arm and hold it while a white racist stole him from us, and he's a liar if he says he didn't hold him.

Can you imagine that? Can you imagine a big ignorant nigger that can't read or write? (Applause) We're gonna tell you there are ignorant whites who can't read and write either. (Applause) You know one of those niggers that insulted me down there, now we are gonna go and chastise him for it. Can you imagine that? (No) We were born and reared in this county where they been seizing and killing niggers all your life (Yeah), and here is one big, burly and black as tar (Applause) because white folks have convicted the mind of the Tom. He thinks that as long as he is with the white folks he is right. I got news for you, black boy. (Applause) We are going to let you and your white racists take care of Port Gibson. (Yea) (Applause) We are going to let you and your trigger-happy and blood-thirsty cops buy all the groceries and clothes up and down Main Street. (Applause) And we are going to let ole Rose Oil out there where the headquarters for the city police—to wait on them to come through here. (That's right.) We will let the police buy the gasoline from them. (Applause)

We mean what we are saying. We are not playing. (Right) We better not even think one of us is black. You better not even be caught near one of these stores. (Applause)

We don't want you caught in Piggly-Wiggly. You remember how he grinned at us four years ago? (Yeah) You know how when he took office he grinned at us? (Yeah) He ain't hired nobody yet. (That's right) (No) And you know old Jitney Jungle down there with those funny letters down on the end? (That's right) (Applause) He haven't hired nobody in [1096] there yet. (No) Do you know poor ole M & M or whatever it stands for, mud and mush, I guess. (Applause) They're out here on the highway and they haven't hired none of us yet.

Do you know Ellis who had a part-time boy all his life? He ain't hired nobody, is he, yet? (No) Then we got ole Stampley, and ninety-nine and three-fourths of

his sales are black folks business. He got the nerve to tell me he ain't gonna put no nigger ringing his cash register. I got news for you, Brother Stampley. You can ring it out your damn self. (Extra loud applause.) I want some of you fat cats after this meeting who wants three of our young boys who ain't a'scar'd of white folks (Applause) (Me) and we want you that's willing to follow the rules now to go down by Brother Stampley's and serve notice on him with our placards that we ain't coming no more.

Then we are going to tell all the young men that drive Piggly-Wiggly trucks now (Yeah) (Be careful, Son.) because the soul brothers and the spirit is watching you. (Extra loud applause.)

All right, Brother Wolf, you're next. (Applause) We got a couple of 'em to come down by Brother Wolf's. We mean business, white folks. We ain't gonna shoot you all, we are going to hit you where it hurts most. (In the pocketbook) (Applause) In the pocketbook and in the ballot box. (Applause) We may as well tell our friends at Alcorn to stay away from up here. (Yea) Now, you say, "What's wrong with you niggers?" I'll tell you what is wrong with us niggers; We are tired of you white folks, you racists and you bigots mistreating us. (Yeah) We are tired of paying you to deny us the right to even exist. (Tell 'em about it.) And we [1097] ain't coming back, white folks. (We ain't.)

You all put a curfew on us at eight o'clock tonight. We are going to do you better than that. We are going to leave at one-thirty. (Loud applause) We are going to leave at one-thirty and we ain't coming back, white folks.

I'm gonna give you your homework, white folks. You got to first fire those four. Listen good. Write it down. (All right, white folks.) Number one is supposed to be the chief of police here. And then, number two, he is that great big, that disgraceful, that uncouth, (Applause) that nigger you got down on the police force. (Applause)

Let me go a little further. We ain't through yet. We want big daddy. Then we want that other one. That poor redneck Wolf that runs around here (Go get him.), that runs around here harassing everybody who pass through here. That is the one that gave us that ticket out there that day.

You know what I'm talking about, policeman. (If you don't know his name, call him a nigger.) (What's his name?) (Wolf) (Wolf) That one that gives us a ticket and claims we run a red light that we don't even see, there is not a red light there,—three or four everytime we boycott you. This time we are not only going to have Wolf going, but ole Kelly, you want to leave Kelly in there? (Yeah) We are going to get Clyde, too. (Loud applause) All right. The price is going up.

Talk about our morals. Now listen to this: Let's be quiet. You know, now, they claim niggers can't because they got morals—their morals are low. Well, I have been informed that we have on our police department, you all hear this now, Butch, before you sue me, that we have got somebody [1098] that went to jail for stealing cows. Now, how bad can you be? A cow thief is one of the worst thieves in America. (Applause) Well, then we go two of them—three of them. Now we got Number 1—Number 4. Well, Ronnie is the first one. We got three policemen and the chief, and we have got to make sure that—who is that—Kelly? (Dan McCay) Well, we will take care of Dan McCay. (Applause) We can't throw him out. We can't get Dan out before two years from now. We want the Chief of Police and three of them bigots on there, including that black one, they have got to be not suspended, not put on probation, but they got to be fired from the role—period. (Applause)

All right, let's go a little further now. You don't know why we don't exist our account and give it to the white folks. Don't fool yourself, fellow, 'cause they can't stand it. I know they can't stand it. You stay out of here, they can't stand it. You are gonna have George Ellis,

you're gonna have Brother Allen here who controls everything in Port Gibson, bless his heart. (Laughter)

We are going to have Brother McCay; we are going to have our newly elected mayor who we elected, we are going to have him around here, too. Come on back, my dear friend. He say, "Naw, brother, we ain't coming." "Have you got rid of all those bigots you got on your police force?" "No." "Have you hired Negroes in all them stores?" "No." "Well, we ain't coming back." (Right) That's all we gonna do. You know, what they don't realize is you put on this curfew, that is all we needed. Let me just give them some instructions. We are going to buy gas only from the Negro-owned service stations. We agreed on it, remember? Now, don't back upon [1099] your agreement. (Yea) I don't care how many Negroes working on it, that's too bad. We are going only to Negro-owned service stations. And we are going only—the only time you will see us around on this street, now listen good, you are going to Lee's Grocery and other stores on this end. Is that clear? (Yeah) (Applause)

We don't want to go to none of them drugstores. They get us confused. Now, who am I going to get my medicine from? Let us know in time and we will be glad to furnish a car free to carry you anywhere you have to go to get a prescription filled. You can't beat this. (No) It won't cost you a dime. You go to any of the local black businessmen and tell them you have got to go to Vicksburg to get your stuff. And then if they don't carry you, let us know. We'll take care of them later. (Applause) Now, you know, we have got a little song that says, "This is your thing, do what you want to do." (Applause) This is our thing, let's do what we want to do with it. Let's make sure now—if you be disobedient now you are going to be in trouble. Remember that, now, listen. Listen good. They are going to start saying, "You know what, Evers is down there with his goon squad, . . ." Now, we know Claiborne County,—"with his goon squad harassing poor ole niggers."

Well, good white folks you have been harassing us all our lives. (Applause) And if we decided to harass you that's our business. (That's right.) They are our children and we are going to discipline them the way we want to. Now, be sure you get all this right on all these tape recorders. Whatever I say on this trip I will say it in Jackson. (Amen) (Glory) And I will say it in Washington and New York. White folks [1100] ain't gonna never control us no more. (Applause)

One more thing we are missing. We would like to ask our dear sheriff a personal favor. Be quiet now. Sheriff, we will guarantee you, what I have told you is—we only got one flunky around here (Laughter)—if you will dismiss the highway patrols, we will assure you that there will be no problems. Now if you don't take our word for it, that is all we can do. You are wasting our taxpayers money. (Yeah)

Now we know John Bell controls all of it, but you be a sheriff, stand up like a man, run your county. Go on. We will help you. Tell these blood-thirsty boys what you have got around here, be quiet now, that they can run on back home and play with mama tonight. (Laughter) They don't have to stay up here and be bothered with us. Be fair about it, sheriff, just so we are going to prove it to you. (Applause) You may not pay us nothing but it is going to cost you like hell to get out of it. (Applause) If you will just let them go home like two o'clock, if you will let them go home, there won't be no problems, let them go home now, you boys go home and go buy your groceries at Jitney Jungle and Piggly-Wiggly and you are going to find we have a nice, quiet peaceful town here tonight. Because, you see, we know our folks. Ya'll know ya'll's. And when we decide to do something we do it together, (Applause) because when we become the mayor—I'm going to be mayor of Fayette (Applause)—when I become mayor of Fayette, I'd be some mad sheriff if I had to call these boys to come down there and straighten out Fayette. (Laughter) I'm

going to let all the good white brothers there know that they ain't got nothing to worry about, for we ain't going to let none of our black policemen beat [1101] no white folks and they sho' ain't going to shoot none and holding them by the hand. We ain't going to let none of our white policemen mistreat no black folks or white folks. We are going to run that kind of town that you fellows can come down and feel free. (That's right.) The highway patrol won't have to come down there and beat up on us for nothing. (Right)

That John Bell Williams can go on to sleep and when he wakes up off one of them—you know, (Laughter) when he wakes up and gets up—you know, he's got two offices. He's got one in the mansion that we pay for; he's got one in the state building; and one in between; and then he has to go to Washington every month for a finish job. Well, you all understand what I am talking about. (Yeah)

Anyway, we are going to have a town and a county. There's going to be a little friction, too. I'm going to let you know that. We are going to have friction and Dan McCay exit at the same time. We are going to have them join hands and go way out on one of our reservations and let them (inaudible) the rest of their lives. We are going to run Jefferson and Claiborne Counties like they ain't never been run before. (Tell 'em.) We are going to do to the white folks what y'all ain't done to us and make you feel a part of it. Make you feel wanted. We ain't gonna kill you. We are not going to have our boys waiting for you when you pass through a red light in Fayette; we are not going to do that to you. You can come through there like a human being. When you come through there like a human being we are not going to bother you. But if you come through there speeding, I don't care who you are, if it's Mrs. Evers, if you speed in Fayette [1102] you are going to pay the price.

Now let me tell you, Mr. Highway Patrolmen, don't come through there speeding. (Laughter and applause.)

You ain't got no right to come through Fayette speeding. (Right) You drive through there 25 miles an hour. Now if you speed we are going to arrest you, put you in jail, and we are going to charge you a dollar for every mile you are over the speed limit. (Applause) Of course, we are going to charge you $12.50 for cost of court and that is my fee. (Applause)

Just so you don't misunderstand me, you know you can't win no case because when you win I'm going to lose my fee and you know I ain't going to let you win no cases. (Applause)

You white folks, all of us here, takes us to the Justice of the Peace and you know we can't win; the constable, he gets a cut out of that, too, and the only way we can get our money is when we convict you all. If you come through there speeding (inaudible)—so don't come through there speeding. If you come through there right and do right, we won't bother you. That's what you done to us. We are going to do a little better. We ain't going to charge you $105.00 for running a red light. We'll charge you a dollar for every mile you speed.

Now, my dear friends, the white folks have got the message. I hope you have got the message and tell every one of our black brothers until all these people are gone, you voted on this in the church, don't let me down, and don't let yourself down. We agreed in the church that we would vacate this town until they have met those requests, the white folks don't demand nothing out of us. All right, white folks, we are just saying until you decide when you want to do these little [1103] things we beg of you, we are not coming back. (No way)

None of us better not be caught up here. (Yea) I don't care how old you are, I don't care how sick you are, I don't care how crazy you are, you better not be caught on these streets shopping in these stores until these demands are met. (Applause)

Now, let's get together. Are you for this or against it? (Applause) (For it.) Remember you voted this. We

intend to enforce it. You needn't go calling the chief of police, he can't help you none. You needn't go calling the sheriff, he can't help you none. (That's right.) He ain't going to offer to sleep with none of us men, I can tell you that. (Applause) Let's don't break our little rules that you agreed upon here. And we want to—instead of—you know, we don't know who made this curfew, I don't know who did that. We ain't got no kind of order on that. Somebody said you are on a curfew. Get out of town, nigger. (Yeah) We are going to teach our white brother how to do this. The first thing you do, white folks, is go and bring the law to us and let yours truly or some of us see it and read it to our folks, and then signed by some of your authority, I don't know who you are, I don't think I (inaudible) and then we will be glad to tell our people what the rules are. And then if we decide we want to go about it, we will go about it. If we decide we don't, we will break it and you will arrest us.

So now we decided we are going back to the church for a quick minute when we leave here and get reorganized. Are you willing to go back to the church? (Yeah) And then we are going to be sure, now, that we decide whether we are going to respect this, I don't know who insisted—whose curfew is [1104] it? You know, white folks got access to a plenty of stuff—ain't nothing but a bunch of niggers and all that. Now white folks, let me ask you this: Do you mean white folks stay out of town, too, or just us? We are going to have an understanding here, Dan.

BY SHERIFF MCCAY:

That's put on by the City, but I understand everybody.

BY CHARLES EVERS (Continuing):

Equal rights. Dan says white folks stay out of town, too. Do you all hear that, white folks? (Laughter and audience noise.) We are going to be peeping. You know, we can peep now. We are going to be peeping and watch-

ing you all and if we see one white folks walking, we are coming out, too. (Applause)

Let's go to the funeral of our young son whenever the funeral is. I don't want you to come with hate because that is not going to solve our problems. (No hate.) We don't want you to hate the white folks here in Port Gibson. That is not going to solve it. If you hate what they have done, I hate to get personal, I hate what they did so much to Medgar, (I know.) I ain't going to ever stop hating them for that. But I am going to chase them in the way what I know is right and just. I am not going to lay out in the bushes and shoot no white folks. That's wrong. I am not gonna go out here and bomb none of them's home. (No) That's not right. But I am going to do everything in my power to take away all the power, political power, legal power that they possess anywhere I live. We are going to compete against them. When we blacks learn to support and respect each other, then and not until [1105] then, will white folks respect us. (Applause)

Now, you know I trust white folks and I mean every word I say. But it comes a time when we got to make up in our mind individually, are we going to make those persons worthwhile. We done talked and raised all kind of sand all day here, now, what is really going to prove it, are we going to live up to what we have said? (Applause) Now if there is any one of us breaks what we agreed upon, you are just as guilty as that little trigger-happy, blood-thirsty rascal. (Tell 'em about it.) You see, if I was mayor of this town, I would have fired him then. Not because he shot a black man, but any time a big ole burly something like Rip and that long-legged something like this other boy, and he is a boy, he must have passed about the sixth grade, go out and cater up to a lit'l ole bitty something like this man, the man had nothing in his hand, didn't even have a pocket knife, he was even almost drunk, they tell me, and they couldn't arrest him. Can you imagine that? The two of them

hold him and they got to shoot him in the stomach. Well, mayor, I would fire them without any hearing, but the mayor ain't got that kind of guts. We are going to fire them for him.

Now, please, colored folks, please, black folks, don't be tricked by this come on, y'all just stay out of town. They are gonna force you out at eight o'clock, do you know that? (Yes) With guns and with billy clubs. So have some horse sense. Stay out of town from now on. Let the highway patrol sit around here chewing tobacco and rolling them ole Bull Durham cigarettes and chew that old black tobacco by themselves.

Wait, wait, now. They ask me where I am going and I say—if they hit you now—I was up here last night when [1106] I got out of the car they went to hit me. I said, wait, wait, now. They asked me where are you going and I said I'm going to see about my folks. Well, that's how they are. Poor Mr. Lightfoot. Did you hear about him? (Yes) I hope the sheriff hears this. Some of your buddies went over—you know, Mr. Lightfoot won't harm a snake, he wouldn't march if you pulled him by his side down the street. And here was this man working over in his shop, working on refrigerators, and the highway patrol went in there and drug him out, and we are going to show you, and beat him almost to death for no reason.

Now, why didn't they, if they were going to beat somebody, beat the one that threw the rock. I don't have any objection if somebody throws a rock, I'd go get him, too, but don't beat innocent folks.

Now, we got pictures to show you that they were lying. This is how wrong you are. Last night you were cussing us and calling us so and so, pushing us in the cars, hitting us with the butts of rifles; here's a man, one of our men who got shot last night for no reason, buckshot is what you were using on human beings. Not on animals but somebody. We are your friends and they've been untrue. If we were your enemy, white folks, listen good, Jefferson County—Claiborne County, you wouldn't wake up no

more. (Audience participation.) (Amen) We want you to understand that. We are your friends. Don't you know that we know that ninety-nine and three-fourths white folks are lazy? (Audience participation) We make your bed up, we make a pot of coffee for you every morning, and we take care of your little snotty-nosed children while you are laying in bed. (Applause) You got to understand how dead-head you really are. We are your friends. We're your friends. [1107] (Inaudible) Why don't you stop this kind of brutality? If you had to call them in last night we could have come in for you and if somebody is wrong, put them in jail. Nobody is against that. We're not going to let nobody do wrong. White folks and black folks. I mean that. I am not going to mistreat nobody.

Now, last night you could have put all of us in jail. We wouldn't have minded. You've got a way to put us in jail. You arrested us before and we didn't give you no trouble. So when you come cussing us and beating us, we ain't going to take that, white folks. You are going to make us mad after awhile. If we get mad, we are going to do something to you. (Applause) Then you are going to have a job.

Now listen, we know we can't outshoot you all. (Right) We know we can't out bomb you all. We got our young folks that can out steal you though. (Applause) Whatever happens to our white brothers in this county, you made it possible. We ask you in all fairness, let's get together here, white folks. Let's work together. There is not going to be no peace in this town for you until there is peace for all of us. Now you understand that.

Now, all the talking I have done this evening I am about through. It won't mean a thing unless we are willing we get together.

I go all over this country, and I ought not tell you white folks this, and I tell other white folks that some day we are going to get together in Mississippi, black and white, and work out our problems. And we are ready to start whenever you are. If you are ready to start, we are. We

ain't going to let you push us, not one inch. (That's right.) If [1108] you come on beating us, we are going to fight back. (Right) We got our understanding. We are all God's children. The same man that brought you all here brought us. You could have been black just like we are. We could have been white and baldheaded just like you are. (Laughter) (Inaudible) We are going to work hard at this, Dan. We are going to be organized this time. We ain't going to be bought off and talked off. We are going to elect the county sheriff here this next time that don't need the highway patrol. Now, you see, Dan had a good chance to set himself up right, but he goofed it. He goofed. (Yeah) He blew it. (Laughter) Don't forget that, heah. (Right) It brings back memories like you know you remember things we do.

Now, if you don't think it is necessary, we don't have to go back to the church. If you want to go back there, we can. I want you to make sure here that we are going to leave this town to our white brothers and we ain't coming back no more until all our requests have been met. Is that the common consent of all of you here? (Applause) (Let's go back to the church.) All right. Are we willing to make sure that everyone of us will be sure that none of the rest of our black brothers violate our . . . (Yea) We are all saying it now. Let's not say it now so much on my part. You know, I'm just sort of leading, you know, how these lawyers are, leading our folks on to say what has to be said. And that's the case. Let's make us a white town. We would like for you to start it. Be courteous now. Don't mistreat nobody. Tell them, in a nice forceful way, the curfew is going to be on until they do what we ask them.

[1109] I guess we will meet Tuesday night. I guess we can. I don't know. We better ask our white brothers can we meet. If we can't meet Tuesday night at eight, we will meet at seven. We are going to meet. (Inaudible) . . . to have a peaceful assembly. Now, First Amendment—the right to assemble. We are going to meet Tuesday night. If

necessary, we will meet before then. Now, tomorrow at three o'clock we are having our big rally at the school. Now all you come. Dr. Henry will be here to tell you about what we are going to go do and please come and hear him. He is not as fireball maybe as some of your brothers, but he is a good, sober-minded leader. So let's be sure we come out tomorrow at 3 o'clock.

Now we would like to ask our white brothers again, you can get your highway patrol out, we give you our word, you don't need them no more. There won't be no more excitement. I promise you that. There won't be nobody around.

Now you fellows go on home and take care of your homework. (Yea) Hold it, now. Let's quietly go back to the church this way. Let's go out and march that way. Let's go out and around to the church this way.

* * * *

[CROSS EXAMINATION]

[1131] Q The speech where you said Charles Evers spoke on April 1st of 1966, did he say anything about using peaceful means or that they were going to be violent? How did he say they would obtain these requests that they made?

A He said they weren't going to trade with the merchants and any Uncle Tom that broke the boycott would be—their necks would be broken by their own people.

Q All right. And the people who—or the means that the people boycotting were to use, was that supposed to be peaceful or violent to keep people out of the stores? What did he say about that?

[1132] A I don't know whether he said it in that speech, but he told them in public speeches before the courthouse said, "If you——"

Q No, sir, I'm talking about the speech of April 1st now?

A April the 1st? He just told them that if any Uncle

Tom traded with them, said, break their necks. He said their necks would be broke by their own people.

* * * *

[Witness Barbara Ellis]

[DIRECT TESTIMONY]

[1188] Q Do you know when you first heard the term "black hats" or "deacons for defense"?

A Oh, yes.

Q Who were they?

A They were on the street just about constantly.

Q Were they black or white?

A They were black.

Q Did they wear any type of——

A They wore black hats, black silk shirts and black pants and black shoes.

Q Can you identify any of the defendants as being in the "black hats" group?

A The ones that I knew from sight were James Whitney and Peter Davis.

Q Who?

A Peter Davis.

Q Did you know any of the others?

A McLawrence Kelly and Bobby Kelly.

Q Are those the only ones that you know?

A Well, Eddie Lee Wells I knew.

Q He was a "black hat"?

A Yes, he was a "black hat".

Q Any of these that you just named, did you ever see any of them stop any of your customers?

A Oh, yes, they stopped any black customer that wanted to go into a white store.

[1189] Q What would they do?

A Well, they would just grab them and threaten them and they couldn't go in. And they have grabbed people with their goods. I came upon this unhappy occasion.

They grabbed their purchases if they went into a white store. It was just over when I got on the scene. All I saw was the woman crying and her goods scattered all over the street.

BY MR. WILSON:

Your Honor, I move that that prior testimony be stricken. She just testified she was not there; she did not see it happen.

BY THE COURT:

I thought she did testify she came upon the scene and saw the goods scattered all over the street. And I am going to overrule your objection. Let the record show that this lady did not state that she saw the incident take place; that she did see the goods scattered all over the street when she came upon the scene. Let's find out who was present there, will you please?

Q Who was there?

A The customer was a Mrs. Olivia Parham. I think she spelled her last name P-a-r-h-a-m. This was not in front of my store. This was in front of George Ellis Food Store. I was on my way to the bank.

Q Who else was present?

A I didn't take notice of anyone else.

Q Well, I mean was it one of the four or five that you just mentioned?

[1190] A I did not see. I came upon the scene and they had gone.

Q She was the only one left?

A That's right. Possibly her husband; I don't remember.

BY MR. WILSON:

Your Honor, I renew my motion and ask this be stricken. This testimony is tied in no way to any of

the defendants in this case or any of the people that she named.

BY THE COURT:

I sustain the objection under those circumstances, and it will be stricken. All right, Mrs. Ellis, I want you to tell if you saw any of these people wearing the black hats personally stop the customers and take merchandise away from them?

A I did not see them take any personally.

Q Did you ever see them stop any of your black customers?

A Yes, they stopped customers.

Q Who was it that you saw them personally stop customers?

A I did not make a record of it.

Q Can you remember who it was?

A No, I do not.

Q But they were wearing black hats?

A That's right, they were.

• • • •

[CROSS EXAMINATION]

[1198] Q Mrs. Ellis, you named quite a number of people you said that stopped people from going into your store. Well, actually you named five. Are these the people you saw stopping people from going in your store: James Whitney, Peter Davis, McLawrence Kelly, Bobby Kelly, and Eddie Lee Wells.

A They are possibly not all of what we call the Black Panthers—I don't know, but they were the only ones that I knew.

Q Did you call them Black Hats or Black Panthers?

A I didn't call them anything. I heard them called Black Panthers.

Q Did you see these people on the streets?

A Oh, yes.

Q You see them stopping [sic] people from going in the stores?

A Yes, every day.

[1199] Q How did they stop them?

A Well, just the sight of them in a few days stopped them. Just the sight of them stopped the customers in just a few days.

Q In a few days?

A Yes.

Q A few days after what?

A When they had intimated [sic] them and threatened them and told them what they would do.

• • • •

Q You said "they had threatened". Who threatened who?

A The Black Panther group.

Q Did you hear somebody threaten somebody in particular?

A I stayed in my store but I could hear well enough to know.

[1200] Q Can you name any person who threatened any other person?

A I did not know all of them by name. Rev. Sam Mailes was grabbed right at my front door as he went out.

Q Did you see that?

A Oh, yes, I saw that.

Q You saw him grabbed by who?

A I could identify the boy if I saw him, but I did not know his name.

Q When did that happen?

A That was during the boycott in '66. Rev. Sam Mailes had been a customer in that store for around 45 years.

Q Was he thrown to the ground?

A Pardon?

Q Was he thrown to the ground?

A No. He was a large man, and I think it would take more than just one to throw him to the ground.

Q Was he larger than the person who grabbed him?

A Yes.

Q Did the person who grabbed him say anything to him?

A Yes. When he grabbed him, he shook him loose and he told him he wasn't supposed to trade in there. This alarmed my husband greatly because he thought he was going to see bodily harm done to Rev. Mailes. But Rev. Mailes told my husband not to worry that he was all right.

Q No bodily harm was done, was it?

A Pardon?

Q No bodily harm was done to Rev. Mailes, was it?

A Not in my presence.

• • • •

[Witness Dan McCay (Recalled)]

[REDIRECT EXAMINATION]

[1376] Q Now at the time you were on the stand last Friday, you were, also, asked about appeals for help. How many appeals for help, that you recall, best of your judgment, that you have received with regard to the boycott?

A I'll say just like I said the other day, I said many. Of course, that could mean lots of different—but I couldn't tell you; I don't recall. But I did have quite a few.

[1377] Q What were the nature of these appeals for help?

A Either that their windshields had been broken or their houses—bricks or stones had been thrown all——

BY MR. CARTER:

We're going to object to this testimony again, Your Honor, and move that it be stricken. This is purely hearsay.

BY MR. SHELL:

If the Court please, Counsel opened this up on cross-examination.

BY MR. CARTER:

I didn't open up any hearsay, if the Court please.

BY MR. SHELL:

Mr. Peters interrogated this witness and asked him about appeals for help, how many did he have, what were the results from these appeals for help. If the Court, please, this is opening the door.

BY THE COURT:

I think so. I am going to overrule the objection.

Q Will you go ahead, Sheriff?

A Some of them were from annoying telephone calls. Others from their windshields being broken out of the automobiles. Some of them from stones being thrown at the houses. Some from being shot in the houses. And some from having paint thrown on their automobile or on their homes, and some from actually physically being whipped.

[1378] Q Can you give us a reasonable estimate as to the number of complaints of this nature that you did receive?

A I'd say for sure a hundred.

Q Were any of these from whites or were they all from blacks?

A They were all from blacks.

Q Now we're talking about the period from April 1, 1965, and on through the boycott. Is this the period that you're telling us about?

A Yes. Of course, lots of them were in the City Limits that I don't handle—misdemeanors.

Q Why didn't you handle those that happened in the City Limits?

A Well, it's a custom that the police department handle those that happen in the City—the misdemeanors. Most of these would be misdemeanors.

Q There's good cooperation between you and the police department as to jurisdiction?

A Right.

Q You were asked and agreed at that time on Friday afternoon last to go back and get your records with regard to the people who were charged with various crimes arising out of these several complaints that were made. Do you recall that?

A Yes, sir.

Q Have you made an effort to obtain that information?

A I have obtained the ones outside the City Limits. I didn't, of course, bring the ones in the City because charges weren't through the County J.P. system. I think I have the names of all that were charged.

[1379] Q Would you tell us the names you have and the charges and dates?

A Well, I had mentioned earlier, we have Calvin Bailey was charged with shooting in a dwelling. That was on 8-23-66, August 23, 1966. There was shooting in two dwellings. Another in the same incident is Elmo James Scott, that's the same date, August 23, 1966.

Q In whose dwelling were they charged with shooting into?

A James Gilmore and Phil Gilmore.

Q Go ahead.

A And on the same incident James Bernard Whitney on August 23, 1966.

Q Have you got another name there?

A I also have Rudolph Shields on June 3, 1966, was charged with trespassing, profane swearing in public places, threatening persons from lawfully trading with a merchant.

Q Do you have the merchant that he was supposed to be threatening the person not to be trading with?

A Mrs. Bearden.

Q Where is that?

A That was at Pattison.

Q Pattison is where?

A That's a little community eight miles east of Port Gibson on Highway 547.

Q Do you have the name of the person he threatened or was said to have been threatened?

A No, I don't.

[1380] Q Do you have any independent recollection of who that would be?

A I know the person but at this moment I can't call the name.

Q Was it a white person or a black person?

A A black person. It was two of them, a woman and her daughter.

Q Do you have others listed there?

A I have a Amy Marie Collins. She was charged with using profane language in public places. It stemmed from——

BY MR. CARTER:

I object to what it stemmed from.

A Okay.

Q What date did that occur on?

A I have that on April 8, 1966.

Q Where was this supposed to have occurred?

A In front of Howards Grocery on Highway 18.

Q Is that outside the City Limits?

A Yes, sir.

Q Go ahead.

A And I have Mack L. Bailey charged on August 10, 1969, with picketing in public street and blocking traffic.

Q Where was this?

A This was in Hermanville.

Q Is that another small community?

A Small community in Claiborne County. It's on Highway 18.

Q Do you have another one?

[1381] A I got Henry Anderson.

Q Will you spell that name for the Court please?

A (Spelling) A-n-d-e-r-s-o-n. This was on April 6, 1966. An affidavit was charged against him for assault and battery with a deadly weapon.

Q Do you have the name of the person that was involved?

A I believe it was Emerson Davis that signed the affidavit.

Q Where is this supposed to have occurred?

A This was supposed to have occurred inside the City Limits around Wolfe's Store.

Q Have you found any more?

A That's the only ones I have found outside the City Limits.

* * * *

[1388] Q Sheriff, you have testified with reference to an arrest being made arising out of an incident in Pattison, Mississippi, where you said a woman and her daughter were supposedly stopped. Do you recall this incident I'm talking about?

A Yes, sir.

Q And I believe you testified these were both black people, the woman and her daughter?

A They weren't stopped. They were sitting on the front porch of this store, and this Rudolph Shields allegedly came on the porch twice and told them to get off and used profane language and threatened them if they didn't get off.

* * * *

[RECROSS EXAMINATION]

[1392] Q What was the disposition of these criminal cases you testified about?

A Some of them I can't remember. I don't know whether you have ever tried to look up J.P. dockets. You don't find—I couldn't even find one set of dockets in Dis-

trict V where this incident happened, Pattison. And I don't always carry on my cards the disposition, because it's on the Judge's docket and not mine. On this Henry Anderson, [1392] I went to the Circuit Clerk and she couldn't find any record of it, even though my records indicate he was bound over for Grand Jury. I don't even remember on that particular one what happened to it; whether it wasn't found a true bill—I'm sure it wasn't never tried.

Q Would it be fair to say that you don't know what the dispositions were on these?

A Most of them, no, I don't. Some of them I do, but most of them I don't.

* * * *

[Witness Rodney Porter]

[DIRECT EXAMINATION]

[2041] Q When these speeches were made by Charles Evers, would you give us the year that you recall they were made?

A It was from the time I came to Port Gibson until the time I left, which would be '66, '67, '68 and the first part of '69.

Q Do you remember the nature of what Evers said in these speeches to the crowd?

A More or less, yes, sir. The best I can put it, there would be a boycott put on the town of Port Gibson unless certain demands that had already been given to the Board, the Mayor and Board of Aldermen, before I came there, unless those demands were fulfilled, and that was, I think, the main purpose of this boycott.

Q Did he make any observations or comments with regard to those who might violate the boycott, the black people who might violate the boycott?

A You mean on what might be done?

Q Yes.

A Ah, yes, sir.

Q Do you recall the nature of what he said?

A Not in exact words, but approximately.

Q Give us your best recollection.

A The first one that I remember when the boycott was put on, it was just a short speech saying why the boycott was going to be put on. The second one which was either two or three weeks difference in the first one and the second speech and the march, that if the black people broke the boycott by going into these stores, that they would pay for it one way or the other, and in different ways they did pay for [2042] it, the ones that went in there.

Q Did you observe any black people stationed on the streets at periodic intervals there in the town, at periodic areas during the time you were there in your work as a policeman?

A Yes, sir.

Q What was the general appearance of these people as to any particular kind of wearing apparel they might have?

A Most of them, the ones that could afford it, wore black outfits, black clothes, black shirt, pants, and big brimmed black hats. Most of the time they were the bigger group. When I say bigger, I mean in size, that stood around on the corners there. They all were about the same size.

Q How often would you see these people standing on the streets?

A Daily.

* * * *

[2043] Q How would they conduct themselves insofar as to how many were marching abreast, whether or not anyone could get through their marching line if they wanted to go in and trade at a store?

A If there were plenty of policemen and patrolmen patroling the streets and standing around, it was—the

marches were orderly, two abreast, but if a policeman turned his back, then they doubled up three or four abreast, but they did march peacefully two abreast especially when they came in front of the police station going down and coming back.

* * * *

[2046] Q In 1966, the latter part of 1966, when you came there as Chief, and even before that if you know and thereafter, did you observe whether or not any of these watchers, the men with the black hats, as we have described them, were armed, had firearms with them?

A No, sir. If they were armed, it would be under their clothes where it couldn't be seen.

Q As far as you know, they were not armed?

A No, sir.

* * * *

[2047] Q Did you ask them why they were on the streets?

A Yes, sir.

Q How did you ascertain that?

A I asked them.

Q Do you remember whom you asked?

A Yes, sir. If I could ask a question, I could give you the fellow's name.

Q Go ahead.

A The boy worked at Thompson Funeral Home at the time.

BY MR. CARTER:

Walker, George Henry.

BY THE WITNESS:

A George Henry Walker. I talked to him on several [2048] occasions.

BY MR. SHELL:

Q Was he stationed on the streets?

A Not stationed. He was moving around. A couple of times, he was in my office there, and I asked him what was the purpose of them being there was.

Q Did he tell you?

A To enforce the boycott.

Q Did he say how they were going to enforce the boycott?

A He said that they were watching the stores, and that they felt that if a person went into one of the boycotted stores, broke the boycott, that they were going to have a talk with them and see that it didn't happen again.

• • • •

[2050] BY MR. SHELL:

Q Would you tell us who it was, Mr. Porter, with reference to the package of alcoholic beverage that was taken away from these customers?

A Yes, sir. I can't tell you the name of the person that took it, because——

Q I mean the one who saw it being taken?

A Yes, sir. In this one particular case that I am referring to, it was around behind one of the colored juke joints. It was a pint of Old Crow taken away from one Emerson Davis.

Q Did you see that happen?

A I saw it. Yes, sir.

• • • •

[2053] Q I call your attention now—well, let me ask you this. Did you witness any other incidents where the Deacons for Defense or the black hats made any action or any motion or interfered in any way with any of the customers of stores on the streets of Port Gibson?

A There was one other incident, but it wasn't with a customer.

Q Who was it with?

A It was with a distributor.

Q Tell us about that.

A Holsum Bread distributor.

Q Just relate what you know about that.

A Mr. Green, the Holsum Bread man. I can't think of his first name, but I will. He had an armload of bread taking it into one of the stores, Arthur Wyatt's store.

Q Arthur Wyatt's store?

A Yes, sir. That is on the corner of Fair Street and something else.

Q Is Fair the colored district in there?

A Yes, sir.

[2054] Q Please continue.

A In doing so, when he went in, Rudy Shields and I don't remember the other boy because I really never did get his name—he was from out of town to the best of my knowledge—took this bread and threw it on the street out of Mr. Green's arms.

Q Did you witness that yourself?

A Yes, sir.

Q Approximately when was this?

A This would have been in the early part or the middle part of 1970, to the best of my knowledge.

Q After that——

BY MR. CARTER:

Your Honor, I am confused about something. I think the witness testified that he left Port Gibson in 1969.

BY THE COURT:

I understood he left in October, '69.

BY MR. CARTER:

Yes, and now he is testifying as to something that happened in 1970.

BY THE WITNESS:

A 1968. It was the middle year that I was there. I just got my years mixed up. The middle year that I was there. It would have been '68.

BY MR. SHELL:

Q In any event, it did occur while you were employed as a policeman on the force at Port Gibson, Mississippi? [2055] A Right.

Q After that, do you have any recollection of any other such incidents?

A No, sir.

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[CROSS EXAMINATION]

[2105] Q You also testified this morning, Mr. Porter, that when you heard Charles Evers speak that he had said black people who broke the boycott would be taken care of, and they were taken care of. Can you develop that a little more fully for us? How many people broke the boycott and how many were taken care of?

A I can't tell you how many broke the boycott, but I did testify of a couple of instances where the boycott was broken and how they were taken care of to a certain extent.

Q Do you know of any others besides the ones you testified to?

A No, sir.

• • • •

[2107] Q Let me draw your attention back to the Emerson Davis incident where you observed some people take some whiskey from him, I believe you testified?

A Yes, sir.

Q Can you tell me who the names of the people or persons were who took the whiskey from Mr. Davis?

A Ah, Rudolph Shields better known as Rudy Shields was one of them, and Alfred Lee Davis.

Q What was the disposition of the charges brought against them for that?

A If I remember correctly, the charges read destroying personal property. That is my best knowledge of it.

Q Did you arrest them on the spot?

A Whenever they took the bottle? No, sir, those charges hadn't been filed at that particular time.

[2108] Q Describe for me if you will, Mr. Porter, exactly the process—you are a police officer, and you see what appears to be a crime taking place in your sight. Did you then go and file a charge or did you ask Mr. Davis if he wanted to? Just describe what happened after you saw this to the point where Rudy Shields and Alfred Davis and maybe some other named individuals were arrested?

A I was approximately half a block away at the time, not quite half a block away. Of course it is a short block, and after this had taken place, I talked to Emerson Davis, and he told me that he wanted to make a complaint because they had taken his whiskey that he had just bought. We walked up to the police station. He signed an affidavit against them, and it was about an hour or so later before they were arrested because I couldn't find them at that particular time.

Q I asked your earlier and I don't think—maybe you didn't understand my question—what disposition was made of the charge. They were brought in. Did you have a trial right there before the Mayor at that point, or——

A They were taken into City Court. City Court was held on Friday mornings at that particular time at 10:00 o'clock, and they were found guilty. I think the case was appealed to Circuit Court, and I don't really remember what happened from there.

Q Can you tell us, Mr. Porter, approximately when that incident occurred? Was it in the early days of the boycott in '68 or '69?

A I would say somewhere in the neighborhood of [2109] '68 because it was a good while after I had been in Port Gibson.

Q You also testified about another incident this morning involving a bread delivery man or something, Holsum Bread. I think you said you witnessed that?

A Yes, sir.

Q Can you tell me what action you took at that time when you witnessed that incident?

A About the same thing, really. I didn't know the man that was on the bread truck just by sight, and he left his helper standing right there where it took place, and he walked—this was taking place at the same place the other one was, within 15 or 20 feet. He walked up the street to where I was at and told me that he wanted to press charges against these people. At the time, he didn't know who the people were. He pointed them out.

Q He signed an affidavit and you went and arrested them?

A Right.

Q Can you tell me what disposition was made of those charges?

A They were found guilty in City Court and it was appealed.

Q You don't know what happened on the appeal?

A No, sir. I don't know.

Q How far apart in time were these two incidents?

A I would say approximately a month or so, maybe longer.

Q In your best recollection it was sometime in the early part of '68?

[2110] A Right.

* * * *

[2133] Q Tell me, Mr. Porter, whether you arrested anyone for conduct which was directly related to the boycott?

A Would you ask that question again?

Q Do you recall arresting anyone for say marching in the street or picketing too close to someone's store or [2134] doing something else that you thought was illegal

and that you also thought was in furtherance of the boycott?

A No, sir.

Q Other than the arrest of Rudy Shields and Al Davis which you testified to—I think you arrested Shields twice on two separate incidents—did you make any other arrests that you thought was associated with boycott activities?

A The arrests that I made, charges had been filed by somebody else.

Q Do you recall arresting anyone else on charges filed by someone alleging that these people had threatened them, pointed guns at them, or prevented them from going in stores?

A Eddie Lee Wells.

Q Can you tell me what he was arrested for?

A I testified earlier that was in the Johnnie Cox case.

Q Do you recall any others?

A Alfred Davis.

Q Was that in connection with the Emerson Davis case?

A That was in connection with the—

Q Bread—

A The bread case.

Q Do you recall any others?

A Not right offhand.

Q Would I be correct, Mr. Porter, in assuming that you would faithfully carry out your duty and arrest [2135] anyone that you saw committing a crime in your presence?

A You mean now?

Q Then and now.

A Yes, sir.

Q Other than the three or four incidents that you testified to, you made no arrests of people for activities that were associated with the boycott as best you recall at this time?

A Not that I recall.

[2136] Q You testified this morning that you were asked by Sheriff McCay to assist him in the investigation of the shooting into the home of Mr. Gilmore. Can you tell me what the result of that investigation was?

A No more than what I stated this morning, that we went down and investigated the shooting where somebody had shot into the house. We found the holes in the house, in the door and windows, where shots had gone through.

Q Do you know whether anyone was arrested and charged?

A I don't know, because we went back to town after [2137] we went down there. If I am not badly mistaken, Sheriff took some pictures, and we went back down, and he took it on from there.

Q As far as you know, Mr. Porter, did that have anything to do with the boycott?

A I don't know.

Q Do you recall, Mr. Porter, ever getting a report that one of the merchants in Port Gibson had pointed a gun at one of the picketers?

A I remember getting a call that a merchant had pointed a gun at somebody.

Q Do you remember who that was?

A The merchant?

Q Yes.

A Yes.

Q What was his name?

A Mr. Jones.

Q What kind of business was he in?

A At the time he was in a partially furniture store business.

Q Did you conduct any investigation of that?

A Well, the person that made the complaint wouldn't file any charges, and of course I asked Mr. Jones about it, and he denied it, but that was the only thing. It was just a report, but the person wouldn't file a complaint.

Q Do you remember who the person was?

A No, sir.

* * * *

[REDIRECT EXAMINATION]

[2176] Q Did you have any complaint made to you of an incident by a black man known as Preacher White?

A Yes, sir.

Q Tell the Court what that was about.

A Preacher White was supposedly supposed to be a brick mason. He lived on Market Street, South Market Street, just down from the police station a few blocks. He came up one morning complaining to me or one afternoon—excuse me—one afternoon right after lunch that a group of people, young colored males, had pulled his overalls down. He wore these big overalls, and he just had one strap hooked. He never did hook the other one. He was a big man. [2177] They had pulled his overalls down and just whipped him something terrible.

Q Who had beat him?

A He said a group of young colored males.

Q Did he identify them to you?

A No, sir, he didn't.

Q This incident that was reported to you reportedly occurred during the course of the boycott?

A Yes, sir.

BY MR. ROYALS:

Your Honor, I object again on the grounds—

BY THE COURT:

Mr. Royals, let the record show the objection, but I might add here, Mr. Royals, in regard to this testimony that this gentleman is testifying not as a complaint [sic] in this case, but he's testifying as an official of the town. He is testifying as the Chief of Police, and he is testifying about complaints that came to him. Unless these things were reduced to writing and placed in the form of an affidavit, I would know no way for this to get into the record unless he could testify as to what these people told him. I think under these circumstances where he is an official, where peo-

ple applied to him for help, that it is fair that the testimony be admitted in evidence. All right, sir.

BY MR. SHELL:

Q Did you have any further discussion with Preacher [2178] White with regard to any specific incident where he had traded with a white-owned store?

A It wasn't a store. He complained of being threatened for buying gasoline at a service station just to run a lawn mower with, a two gallon can of gasoline.

Q Was this the same incident where he complained of being beaten or was this another occasion?

A This was a different time.

Q The service station that sold him the gasoline, was it white-operated or black-operated?

A Yes, sir, it was white-operated.

* * * *

[2179] Q Did you receive any complaint from a white man driving a truck for Dan McCay, the white man being named Marvin Hynum?

A Yes, sir.

Q Tell the Court about that.

[2180] A Here again, it was one of these cases that had to be turned over to the county officials, but he complained of rocks being thrown as he was going down Anthony Street which after you go down Anthony Street so far there toward the school, you run out into the county, once you leave that street going on to the school campus, and it happened right at the intersection there.

Q Did he tell you who had thrown the rocks?

A He did not know.

Q Did he tell you whether they were black or white people that threw the rocks at him?

A They were black teenagers.

Q Did you have any complaint from a colored man by the name of Johnny Shorter with reference to any interference with the delivery of milk?

A Not—well, he was with Marvin Hynum in this incident. That is the only complaint I have, the two of them together.

Q Did this occur during the course of the boycott?

A Yes, sir.

• • • •

[RECROSS EXAMINATION]

[2185] Q With regard to Preacher White, you don't know who those people were who allegedly pulled his pants down and whipped him?

A No, sir.

Q Did you do any investigation of that?

A As far as I could.

Q Can you tell me what that investigation consisted of?

A Trying to find out the names of the people that did it.

Q How did you go about doing that?

A Asking descriptions, clothing descriptions.

Q Do you recall approximately when this happened?

A No, sir.

Q Was it early on in the boycott or late in the boycott? You did testify it was during the boycott?

A Right.

Q Was Preacher White observing the boycott?

A No, sir. He shopped where he wanted to.

Q And you saw him also going in and out of stores?

A Yes, sir.

Q Were there Black Hats on the street at the times when you saw Preacher White going in and out of the stores?

A Yes, sir.

Q Did you ever observe any of the Black Hats physically accost Preacher White as he was going in and out of the stores?

A No, sir.

• • • •

[2188] Q There was a separate incident with regard to Preacher White. I think you testified that he told you he was [2189] threatened for buying gasoline?

A Yes, sir.

Q Was he able to tell you who threatened him?

A Yes, sir.

Q Can you tell us who it was?

A I can't give you his name, but I can tell you what he does for a living.

Q That may be helpful.

A He is a painter. Weathers. Albert Weathers.

Q Did Preacher White make a formal complaint?

A He made an oral complaint. He didn't sign anything.

Q Did he refuse to make a formal complaint?

A You mean to sign an affidavit?

Q Yes.

A Yes, sir.

Q Do you know what his reason for coming to you with an oral complaint was if he didn't want anything done about it?

A Yes, sir.

Q What was that reason?

A That I might—he was afraid to sign an affidavit—afraid of what might happen to him later, and he just wanted me to know what went on where I could kind of keep a watch around his house. The same way with all these people.

Q None of these resulted in formal complaints?

A As far as a signed affidavit, no, sir.

• • • •

[Witness Elmo Scott]

[CROSS-EXAMINATION]

[2755] Q Now, when you went to these meetings and you heard the boycott called and put on, don't you remember that Charles Evers said, "We're going to leave town

by noon today or 1:30. We're not going to be around to trade with any of these merchants and they'll just have to do the best they can and find out that they need us to trade with them. I want you all to either go back to the church or go home, but don't come downtown in downtown Port Gibson and trade"? Do you recall that?

A Right.

Q Charles Evers said that in that speech on April the 1st, 1966, didn't he?

A Right.

Q And he also indicated at that time that if anyone violated the boycott they would be dealt with, did he not?

A They would be what?

Q They would be dealt with.

A What you mean "dealt with"?

Q You don't understand the term?

A Right.

Q Well, I don't know exactly what he meant either. I'm seeing if you remember any particular language that he [2756] used.

* * * *

[2843] Q Mr. Scott, just as we were recessing at noon, the Court asked you something with reference to the Deacons for Defense and he deferred asking you anything further about it. I want to ask you about the Deacons. Do you know what I'm talking about?

A Yes.

Q Were you not Secretary of the Deacons?

A Yes.

Q When were the Deacons organized?

A It was organized in the summer of '66.

Q And who was responsible for the organization being put together?

A It was a group of young men.

Q Well, somebody had to be leader. Were you [2844] leader of the group of young men?

A No.

Q Who was the leader?

A I believe it was George Walker.

Q George Walker?

A That's right.

Q Is he the one who's off somewhere in school now?

A Right.

Q I see. And how did it come about that you knew anything at all about it? Did George Walker contact you?

A No, he didn't.

Q How did you learn about the organization?

A Well, I was in the group during the time they were discussing it.

Q In what group?

A Well, a group of young men.

Q Well, did George Walker call a meeting of a group of young men whom he had selected and wanted to meet with him to discuss this organization?

A No, he didn't call no special group.

Q You had to have some way of knowing how to get together. How did you know to meet?

A Well, I think he had got in touch with everybody some kind of way.

Q And he got in touch with you, too, didn't he?

A Well, yeah.

Q He either personally got in touch with you or sent you word that he wanted to meet with you, didn't he?

[2845] A Yeah.

Q Where did you meet?

A We met downtown, next door to Alexander Collins' barbershop.

Q Next door to his barbershop?

A On his parking lot.

Q I see. Did you meet in the daytime or in the nighttime?

A In the afternoon.

Q Still daylight?

A Yeah.

Q What did George Walker describe to you as what he expected to accomplish by this meeting? What was he trying to get done?

A Well, he described that we could organize a club as the Deacons, and then he elected President and Secretary and Treasurer.

Q Right. And what was the club supposed to do?

A Well, after the club was set up and everything, he asked the members to, after the boycott had started, asked them would we help to keep the black people from going into the stores.

Q You were going to be the enforcers of the boycott, weren't you?

A Beg your pardon?

Q You were going to enforce the boycott, weren't you?

A Say we were going to enforce the boycott?

Q Right. By keeping the black people from going in the white stores.

[2846] A Right.

Q Wasn't that your purpose?

A Yeah.

Q And that was the sole purpose of your organization, wasn't it?

A Yeah.

* * * *

[2860] Q I call your attention to page 30 on Exhibit C-23 and ask you if there is a list of the membership of the Deacons.

A Yes.

Q Would you read those names off, please?

A Douglas Atlas, Alonzo Atlas, Morris Atlas, Roosevelt Anderson, and Henry Anderson, Calvin Bailey, Timothy Barnes, John Brooks, Robert F. Butler—

Q Is that John Booker?

A Brooks, B-R-O-O-K-S.

Q I see. O. K. Go ahead.

A Robert F. Butler, Alfred L. Davis, and Jimmy Ellis.

Q Let me ask you this. There is a figure out to the side of Jimmy Ellis, 6.15. What does that mean?

A This is where he caught up on his dues.

Q Is that your writing, that 6.15?

A Yeah.

Q All right. That's $6.15 dues he paid up?

A Right.

Q All right. Go ahead.

A Charles Groves, James Greer, James Goldsberry, Andrew Gusta, Robert Harris, Roosevelt Henry, Lewis L. Johnson, [2861] Hugh Johnson, George Jenkins, Ernest Jones, Nathaniel Jones.

Q All right now, turn over to page 31. Is that a continuation of the list?

A Right.

Q Would you read those names out to us, please?

A Melvin Kilcrease, Carl Lipscomb, Charles C. Lipscomb, Charlie Miller, Nathaniel Minor, Phenix Moble, James Odom, Kenneth Odom, Frank Porter, Lawrence Rice.

Q Now, by Lawrence Rice's name appears $10.35. What is that?

A He was catching up on his dues.

Q He caught up on his dues?

A Right.

Q All right. Go ahead.

A Elmo J. Scott, James Scott, Willie Shorter, Bill B. Smith, Melvin Thomas, Jody Toliver, Willie Toliver, George E. Walker, Juliue [sic] E. Warner, Walter Wilson, Sidney Wilson, James B. Whitney, Bobby L. Wood, Leonard Wilson.

Q And the last name on page 32?

A Rudy Shields.

Q And what is that beneath that, that notation?

A "For paper".

Q And the two figures that amount to $16.40 beneath that, are there not?

A Right.

Q What does that mean?

A What?

Q What is this about, "for papers"?

A That was paper that they bought to picket with.

[2862] Q Oh, your signs, your picket signs.

A Right.

Q Did you assist in making the notations on those signs?

A Did I assist in making the notations?

Q Yes. What the words were on the signs.

A No, I didn't.

Q All right.

BY THE COURT:

Mr. Shell, there is one thing here. These figures, $10.35 and $6.15, correspond, I believe, with these figures that you have already noted. I didn't know whether you noticed that or not. You might wish to question the witness on that point.

Q Were the two caught-up figures you were talking about, $10.35 and $6.15, monies you collected from those two individuals?

A Right.

Q And then did you pay that money over to Rudy Shields?

A No.

Q Is there any reason why these figures are exactly the same as those two on the preceding pages of 31 and 32?

A No.

Q Now then, did you meet every Monday night while you were actively engaged in the work of the Deacons?

A Yes.

[2863] Q These individuals whose names you have read, were every one of those black men?

A Black.

Q Were they all members of the NAACP?

A Right.

Q At the time that your organization was put together, I believe you said George Henry Walker was the one who called you together.

A Right.

Q Was he then President of the NAACP?

A Not then.

Q He later became President, did he not?

A Right.

Q Now, on page 6 in Exhibit C-23, I take it this is in your handwriting, too, is it not?

A Right.

Q What is this sentence about the fourth paragraph down? What does that say? Can you read that writing?

BY THE COURT:

What page are you on?

Q Page 6. Does that now say, "Mr. Seal suggests we pay for our weapon. There have been a deadline set for this"?

A Right.

Q Isn't that what it says?

A Right.

Q What are you talking about there?

A Well, Mr. Shields had suggested that everybody that wanted to own his own weapon, they would have to pay for [2864] it themselves.

Q What kind of weapons were you talking about?

A A rifle.

Q Did you have rifles as a part of your membership in the organization?

A No.

Q Well, why would you make a notation in your minutes about them if they were not connected with the Deacons?

A Well, that's what was discussed at the meeting at the time.

Q What was discussed at the meeting at the time?

A About the weapons.

Q Well, what were you going to do with weapons?

A For protecting.

Q Had you been threatened on the streets?

A Yeah.

Q By whom?

A By several whites.

Q And you were going to arm yourself with rifles to protect yourselves? Is that what you're telling the Court now?

A Well, at the time, they had weapons in the back of their trucks, hanging across the back windows.

Q Don't you know every farmer in Mississippi carries a shotgun in the back of his pickup truck to shoot birds and squirrels and other game and hawks that come across their fields?

A Well, it wasn't very many at the time that would [2865] carry weapons in the trucks.

Q So you were going to arm yourselves with weapons to protect yourselves, and Mr. Shields suggested that you pay for your own. Is that what you're telling the Court now?

A Yes.

Q All right. Now, on page 7 of this Exhibit C-23, there appears a notation, the last paragraph on that page. What does that say?

A It says, "The President and two more members went to Fayette to pick up some straw hats which sell for $3.50 each."

Q That was dated July 6th, 1966, was it not?

A Right.

Q Now, these straw hats were black straw hats, were they not?

A Right.

Q This was part of what you were going to use as your identification as you were the store watchers on the streets of Port Gibson, wasn't it?

A Yeah.

Q O. K. On page 8 of Exhibit 23 appears a list of items, and one of which, the third from the bottom, is July 5, $7.07 helmet. Is that correct?

A Yeah.

Q What kind of helmet were you buying?

A It was a black helmet.

Q A black helmet?

A Yes.

[2866] Q Was it metal?

A No. It was a plastic, sort of like.

Q Well, what was the purpose of the black helmet?

A Well, they never did buy the helmet.

Q That isn't what I asked you. What was the purpose of it? Why did you make an entry of $7.07 on July 5 for a helmet?

A That's what some of the members suggested that they wanted.

Q They wanted black helmets instead of black straw hats.

A Right.

Q And that would still be a part of the Black Hat group, would it not?

A Right.

Q And that was still your identification so the buying public would know that you were there watching to see to it the boycott was enforced, wasn't it?

A Right.

Q Your answer is correct?

A Yeah.

Q All right. Now, on page 10 of Exhibit C-23, the very first top notation after the date July 11, 1966, reads—

and you correct me if I'm misreading this—"Walkie-talkie will be passed out the one that are on guard that night."

A Right.

Q Had you acquired some walkie-talkies?

A Had we did what?

Q Had you bought some walkie-talkies?

[2867] A No. Just several of the guys had walkie-talkies at home.

Q And what were you going to do with the walkie-talkies?

A Well, say, if we was at a meeting at the church, a mass meeting, maybe one guy that was standing up on the block and the next guy probably was standing at the church outside, and they could talk to each other from a distance.

Q Was that the purpose of the walkie-talkie as you recall it?

A Yes.

Q Now, you used those walkie-talkies on the streets to communicate with the watchers from one block to another also, didn't you?

A Right.

Q And when you would see a black customer come out of a white boycotted store, whoever was there would send a message down to the man on the corner or the men on the corner and tell them about this person having made a purchase in the white store, wouldn't you?

A Yes.

Q All right. Then that person at the corner who was being sent the message would stop that black customer and either get after them or take the merchandise away from them that they had bought in the white store, wouldn't they?

A No.

Q Well, what would they do when they learned of the message down the street?

[2868] A They would talk to them and ask them not to go back in and break the boycott.

Q Did you ever talk to anyone who had been in and you had received a message?

A No, I never did use a walkie-talkie.

Q You didn't use a walkie-talkie. You know what the purpose of it was, though, don't you?

A Yeah.

Q Who is Alonzo McLaurin?

A He was a member of the NAACP.

Q Was he also a Deacon?

A No.

Q Well, what is this notation on page 10 of Exhibit C-23, "That Mr. Alonzo McLaurin attend the meeting. He gave us some high points how to act as a guard"? Does that mean that Mr. McLaurin, not a member of the Deacons, but as a member of the NAACP, came down and instructed you gentlemen on how you were to conduct yourselves as watchers on the streets in Port Gibson?

A Yes.

Q Now, your watching on the streets of Port Gibson primarily was along Market Street, was it not?

A Yeah.

Q That's the main business district of Port Gibson, is it?

A Yes.

Q And that's primarily where the white stores were all located you were boycotting, is it not?

A Yes.

[2869] BY MR. SHELL:

Your Honor, I apologize for being slow, but I can't read all these things. I made turn-downs, but I'm still having difficulty with it.

(Continuing):

Q Now, on page 11 of Exhibit C-23, there appears this notation in the third paragraph, "Lewis Johnson are

going to Vicksburg to get some ammunition. It will be about Saturday." Now, what are you talking about going to town to get some ammunition?

A Well, he was going to get some so they could go out and practice targets.

Q Target shooting?

A Right.

Q Well, why were you going out to practice target shooting?

A Well, it was some guys that belonged to the Deacons that claimed that they had never shot a rifle before.

Q And you wanted every Deacon to be a real good marksman, and so you were providing ammunition for the weaponry so they could go out and practice to be good shots in case they decided they wanted to do some shooting. Is that correct?

A No.

Q Well, what was the purpose?

A Well, the purpose was everyone wanted to be able to shoot a rifle.

Q Well, this is just a nice social shooting club and rifle club you're telling us about now?

[2870] A Well, once they thought about a club like that, but they never did come to no conclusion.

Q And that never was the purpose of the Deacons, was it?

A No.

Q The sole purpose of the Deacons was to see that the boycott was observed, wasn't it?

A Right.

Q Now, I believe you testified earlier that the walkie-talkies you had involved and were talking about all belonged to the individuals already. Is that correct?

A They all belonged to individuals?

Q Yes, the members of the Deacons.

A Right.

Q Now, on page 11 of Exhibit C-23, I show you the bottom notation. "Some of the Deacons went to Vicks-

burg on Tuesday to pick up two walkie-talkies, which cost $86.84. That left the treasurer in debt."

A Right.

Q So the Deacons paid for the walkie-talkies, didn't they?

A They paid for the last two that they needed.

Q All right. Now, on page 13 of Exhibit C-23 appears a notation, "Everybody that have black hat are asked to wear them."

A Right.

Q Now, what is that talking about?

A So that you could be identified.

Q Well, who did you want to identify you; the [2871] black citizens of Claiborne County?

A Right.

Q So they would know that you were watching them when they went in to trade with white stores, wasn't it?

A Right.

Q That way you expected them to stay away from the white stores because they knew you were watching them, didn't they?

A Yes.

Q On page 19 of Exhibit C-23, which is dated June 30, 1966, you made the notation that "The President called a special meeting Thursday night with some of the members. And each leader of the group are asked to take two or three men to guard the church." Is that not correct?

A Right.

• • • •

[2872] Q Now, with reference to the notation I asked you about on page 10 of Exhibit C-23, where Mr. Alonzo McLaurin, the member of the NAACP, came to your organization and attended a meeting to give you some high points on how to act as a guard, as a guard for what?

A How to act as a guard is what he meant is how would you go about to guard the peoples and keep them out of [2873] the stores.

Q In other words, it was what would you do as a guard standing on the streets in Port Gibson to keep the black customers from going into the white stores you had under boycott, wasn't it?

A Yes.

Q And what did he instruct you to do in that connection?

A Well, he told us, he say if a lady or man was going into the store, to go up to them and ask them not to shop there because, if they did, they would be breaking the boycott.

Q They would be breaking the boycott?

A Right.

Q All right. Then what else were you to say to them if they insisted on going in?

A Well, they never did go on in.

Q You saw to it that they never made it inside the store, didn't you?

A They would always turn around.

Q Well, did you threaten them when you went up there?

A No.

Q You didn't tell them they better look out, they would have trouble at home that night?

A No.

Q You didn't threaten to throw brickbats on their house?

A No.

[2874] Q Did you threaten to shoot their homes?

A No.

Q You did shoot into a home, didn't you?

A No.

* * * *

[2875] Q How long did you maintain this Defender group?

A Beg your pardon?

Q How long did this Defender group stay in existence?

A I'd say somewhere about the last of '66 or maybe from '66 up until about '67.

• • • •

[2956] Q Were you in the group that was being drilled by Calvin Williams behind the Piggly-Wiggly store?

A No.

Q You weren't aware that there was a drill being conducted back there?

A No, I wasn't.

Q Were you aware of any drillings that went on where the Deacons were present where they were carrying weapons like rifles or shotguns?

A Say was I aware of it?

Q Yeah. You knew they drilled with weapons, didn't you, marching with them in practice formation?

A No.

Q You did not?

A No.

Q This never was brought to your attention so as to be put in the minutes.

A No.

• • • •

[2977] Q Did Mr. Charles Evers ever attend a Deacons meeting[?]

A No.

Q Did he ever make any speeches to you officers of the Deacons as to how you should conduct yourselves?

A No.

Q Yesterday with regards to the carrying of arms or weapons, you testified that some white men had threatened you. What white men threatened you?

A I didn't say any threatened me.

Q Well, threatened your Deacons.

A But I heard different ones say they had been threatened by several white men.

Q Did they say what white men threatened them?

A No, they didn't.

Q Who said they had been threatened by the white men?

A Well, I really can't remember what the man said.

[2978] Q You don't remember which one of your Deacons reported that he had been threatened by a white man or men?

A That's right.

Q When were these threats supposed to have been made?

A Beg your pardon?

Q When were these threats supposed to have been made?

A Say when were they supposed to have been made?

Q Yeah.

A Talking about when they was threatened? Say when were they threatened or something?

Q Yeah.

A Well, I assume it was during sometime when they was picketing or marching or something.

Q Your Deacons were picketing as well as marching as well as watching, weren't they?

A Beg your pardon?

Q Your Deacons were picketing then and were also marching and were also serving as watchers or enforcers of the boycott, weren't they?

A Yes.

* * * *

[2984] DIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Scott, did you take home with you last night a copy of Exhibit C-23 which you have before you there?

A Yes.

Q And did you, at my request, examine it? Did you read it last night?

A Yes.

Q Can you tell me, to the best of your recollection, does it contain everything that was in the original that Sheriff McCay took from you?

A Yes, it does.

Q Would you look at page 20 of that exhibit, Mr. Scott?

[2985] A Yes.

Q Can you read the last entry on that page, please?

A The last paragraph?

Q Yes.

A "If you are a member of this organization, you are not to be using bad language. Give respect to other people on the street."

Q Can you tell the Court whether members of the Deacons were given instructions about how they were to act on the street?

A Yes.

Q Can you tell us as best you recall generally what those instructions were?

A Yes. It was given to the Deacons to give respect to the people that was on the street and, regardless of what they say back to you, for you not to use bad language to them or not to curse them or no kind of way, just talk to them in the right manner of way.

Q Did you abide by those instructions, Mr. Scott, when you were on the street?

A Yes, I did.

Q To your knowledge, was any member of the Deacons ever brought up before the group and accused of not following those instructions?

A No.

Q Did anyone from outside the membership of the Deacons ever approach you and say that some member had violated those instructions?

[2986] A No, they didn't.

* * * *

[2988] Q Again, with regard to C-23, Mr. Scott, the exhibit before you, I would like, if we can, to establish

some fairly close times as to when the Deacons were organized and when they went out of existence, as far as you know.

A Well, as far as I know——

Q Wait a minute. Would you take a look at that and tell me what's the earliest date you see in Exhibit C-23 with regard to activity by the Deacons?

A Here I see July the 1st of 1966.

Q Is that the earliest date you see in there, Mr. Scott?

A That's right. Wait. Let me check. I can't really tell whether this is June on page 1. Looks like June the 20th, 1966.

Q Does that, Mr. Scott, refresh your recollection as to approximately when the organization was set up?

A It was set up between the month of June and July.

[2989] Q Would you again examine C-23 toward the end and tell the Court what's the latest date you see in that exhibit?

A At the end?

Q Near the end. What's the latest date you can find anywhere in there?

A The latest date I see is the 8th and the 22nd.

Q Of what month?

A That was the eighth month.

Q August 22nd?

A That's right.

Q August the 22nd of what year, Mr. Scott?

A That looks like 1966, I believe it is. It's faded out here.

Q Do you recall whether that would have been August 22nd of that same year?

A Yes.

Q In 1966?

A Right.

* * * *

[2991] Q Do you recall when you were arrested in connection with the Gilmore shooting incident?

A Yes, I believe it was in '66.

Q Do you recall when in 1966?

A It was in August or the last of July.

Q At the time that you were arrested, was the minute book of the Deacons taken from you at that time?

A Yes.

Q Were you released on bond after the charges were filed?

A Yes, I was released on bond.

Q Were there any subsequent meetings of the Deacons after you were released?

A Yes. We worked for a while after we was released, after I was released.

[2992] Q Did you take any minutes at those meetings?

A No, I didn't.

Q Can you tell the Court approximately how long after you were released the meetings continued or how many weeks or months thereafter?

A To my knowledge, I think they continued about a month.

Q And as far as you know, the activity of the Deacons were discontinued about a month after you were released on bond?

A Right.

Q You don't remember precisely when that was ?

A No.

* * * *

[2993] Q Do you recall how long you were held in jail before being released on bond?

A I was held in jail from the time of between 10:30 P. M. until 6:00 P.M. the next afternoon, the next day.

* * * *

[2997] Q Can you tell the Court, Mr. Scott, what the word "enforcer" means?

A The word "enforcer" means to enforce—I can't get it together now.

Q Well, Mr. Scott, you've testified in answer to Mr. Shell's questions that one purpose of the Deacons was to enforce the boycott.

A Right.

Q Can you explain to the Court what you meant by that answer?

BY MR. PYLES:

Your Honor, I'm going to object to that. [2998] I think that's perfectly clear. He's trying to impeach his own witness.

BY THE COURT:

No. I think he's trying to find out if his witness knows what he was testifying to. I'm going to overrule the objection and let him answer the question.

Q Can you tell the Court what you meant by it when you answered yes, the Deacons were to enforce the boycott? What did that mean to you in your mind?

A What that means, well, it means, my opinion, that they was helping to keep the people from breaking the boycott, and by obeying the law and give respect to different ones.

Q Is it accurate to say, Mr. Scott, that it was to help keep people from breaking the boycott?

A Right.

BY MR. PYLES:

Your Honor, I'm going to object.

BY THE COURT:

I think that's really the meaning of the word to enforce the thing, is to see that they don't break the boycott.

BY MR. PYLES:

I'll withdraw my objection then. I understood Mr. Wilson was doing the testifying.

BY THE COURT:

Well, he just asked him, and he was replying in the affirmative. I think the man knows what [2999] the word means. He's given a fairly good definition.

Q Now, Mr. Scott, can you tell the Court, or will you tell the Court by what means the Deacons were to enforce the boycott?

A By what means?

Q Yes. In what way? What were you going to do?

A To enforce the boycott?

Q Yes.

A Well, the ways to enforce the boycott is to help by keeping black people out of the stores.

Q How were you going to keep them out of the stores, or how did you keep them out of the stores, Mr. Scott?

A Well, by just asking them not to shop where they're not supposed to, go in certain stores that they're not supposed to go in.

Q In your meetings, in your Deacons meetings, were you ever told to physically stop people from going in stores?

A No. In our meetings, we always was told to ask. We was asked to talk to the people in a mannerly way and ask them not to go in there and shop with the white merchants.

Q Were you ever told in your meetings, Mr. Scott, that you would take acts against people who went into stores, who didn't follow your advice or suggestions that they not go in?

A No.

Q Did you ever commit any acts of violence?

[3000] A No.

* * * *

[3018] Q I will ask you one more question. You said that Mr. McLaurin came to the Deacons meetings.

A Yes.

Q From the NAACP. Do you recall whether or not he was invited or whether he asked to come?

* * * *

A I don't know how he was accidentally there, but I think he heard about the Deacons getting together and he came in and he sat in on a meeting.

Q Yeah. Now, did he instruct you as to how to guard, or did he instruct you as to NAACP's view of what you were doing?

A Say——

Q In your minutes, you said something about he told you how to guard.

A Uh-huh.

[3019] Q What did he tell you about guarding?

A Well, the only thing that he said about guarding, he said just like if you was on the street and you was watching a store and how to go about guarding the store, and not to just stand right opposite of the door or right opposite in front of the store, stand where couldn't nothing be said from the owner of the store or something.

* * * *

[RECROSS EXAMINATION]

[3022] Q Now your memory has been refreshed, and it was August the 22nd, 1966 that you were charged with shooting into the home of Gilmore, isn't it?

A Yes.

Q And that's the last date that appears as an entry in your Deacons book, isn't it?

A That's right.

Q Now, on that occasion when you were arrested and charged with this crime, August 22nd, 1966, that was the date that your book was taken in the course of taking you into custody, wasn't it?

A Right, sir.

* * * *

[Witness James Whitney]

[CROSS-EXAMINATION]

• • • •

[3298] Q Are you a member of an organization known as the Deacons?

A Yes, sir.

Q What is the deacons?

A An organization for defense, to protect black peoples in Port Gibson.

Q Do I understand your testimony to be that it is an organization to protect black people?

A In Claiborne County.

Q In Claiborne County. Were the Deacons active, taking a part in the boycott?

A Yeah.

Q What were they protecting the black people in Claiborne County against when they took part in the boycott?

A They weren't protecting them from anything, I don't guess. They were taking part in the boycott.

Q What were they doing as an organization to take part in the boycott of the white merchants of Claiborne County as of April 1, 1966?

A They carried pickets.

[3299] Q Did what?

A Carried pickets.

Q You mean they carried picket signs in front of the stores?

A Yeah.

Q What else did the Deacons do to carry out the objectives of the boycott?

A That is all I know.

Q Did you do any store watching?

A Yeah, we store watched and picketed.

Q Did you do any drilling in a military fashion?

A No.

Q Was there any military type unit organized by the blacks during this period down there to your knowledge?

A No, there wasn't.

Q Whose idea was it to organize the Deacons?

A A group of us citizens.

Q When you say a group of us citizens, who besides yourself had the idea to organize?

A Mr. Shields and myself and George Henry Walker.

Q That is Rudolph Shields?

A Yes, that is right.

Q Who is Rudolph Shields?

A Who is he?

Q Yes.

A Rudy Shields is all I know.

Q Is he a native of Claiborne County?

A At that time he was.

* * * *

[3301] Q Tell me as nearly as you can the substance of what was said at the time that you all were driving around and meeting at your house about the formation of the Deacons for Defense?

[3302] A It was for protection of the people at the church.

Q I didn't understand you.

A It was for protection of the people at the church so they wouldn't be harassed so they could have the meetings.

Q I am sorry, but I can't understand you.

BY THE COURT:

Slow your talking down just a little bit, please. I am having a very difficult time understanding you.

BY MR. PYLES:

Q Talking slowly, tell us exactly the substance of the conversation when you decided to form the Deacons.

A I don't know who brought it up. We decided to form the Deacons to have protection at the church when they have meetings.

Q You decided that one of your duties was going to be to protect the NAACP membership meetings at the church?

A Yes, that is right.

Q That was the meetings that you were holding on Tuesday nights at the First Baptist Church?

A That is right.

Q That you wanted to protect?

A That is right.

Q Were you having any difficulty at these meetings at the church? Was anyone harassing you or doing anything like that at the church so that you needed protection?

A No.

[3303] Q Nothing, you are saying?

A No.

Q When you say that one of the things you wanted to do was to organize a group to defend the church, and yet you weren't having any trouble, who were you going to defend against?

A If we had any trouble.

* * * *

[3325] Q When you and your fellow Deacons patrolled the streets of Port Gibson to keep the black people from going in the white stores, you were then enforcing the boycott, were you not?

A Yes, sir.

Q Did anyone tell you to do this?

A I don't recall.

Q Did the NAACP ask you to assist them in enforcing the boycott?

A We needed somebody to watch the stores.

Q I can't understand you.

A They didn't ask me, but we needed somebody to watch the stores.

Q How did you know this?

A They told us they needed somebody to watch to keep peoples out of the stores.

Q Who told that?

A Somebody at the meetings.

Q Somebody at the NAACP meetings told the Deacons the stores had to be watched to keep the people out of the stores?

A We were not the Deacons then.

Q What were you then?

A We were just members like everybody else.

[3326] Q Did the NAACP call for volunteers among the members to watch the stores?

A Yes, sir.

Q Do you recall the date of the meeting when someone called for volunteers to watch the stores to keep black people out of the stores?

A It was put on April 1st—

Q They did that on April 1st?

A The boycott was put on April 1st. We were told the day before, I think.

Q So that would be March 31st, 1966?

A That is right.

Q Who told you that, Mr. Whitney?

A Mr. Shields, I guess.

Q Did he say that at a meeting of the NAACP in the First Baptist Church?

A At the First Baptist Church.

Q Was Charles Evers present at that meeting?

A Yes, sir.

Q How many of you volunteered to become store watchers at that meeting?

A There was a whole bunch. I don't know.

Q Could you give us your estimate of the number of people who volunteered?

A About 25.

Q Were they all males, black males?

A No.

Q Some females volunteered to watch the stores too? [3327] A And children.

Q What were the children going to do?

A Watch the stores and tell the people they were under boycott.

Q Whenever they saw a black person about to go in a store, what were your instructions?

A To tell them that the store was under boycott.

Q Were you instructed by Mr. Shields and other NAACP leaders at the meetings to ask the black people not to go in the white stores?

A Yes, sir.

Q Were you told to ask the white people not to go in the white stores?

A No.

Q Were you given any kind of instructions on keeping the black people out of the stores?

A No more than telling them it was boycotted.

Q Just tell them it is boycotted and ask them not to go in?

A Yes.

Q Did they give you any instructions about standing outside the doors of these stores, and if you were to see a black person about to enter the store, to stop him and tell him it was boycotted?

A No. They told us not to stand in front of the stores.

Q Not to stand in front of the door?

A Blocking the doorway.

Q Not to block the doorway, but just to stand to [3328] one side?

A No, not standing. Just walking up and down the street.

Q Walking up and down, and if you saw a black person going in the store or about to go into the store, you were to stop him and ask him not to go in?

A Yes.

Q Did you do that yourself?

A We all did.

Q You did yourself?

A I have.

Q And all these 20 or 25 volunteers plus the black Deacons, is that correct?

A At that time there wasn't no Deacons.

Q Well, I know there wasn't any at that time, but later on the black Deacons took over this assignment, did they not?

A They watched, too.

Q They watched along with these volunteers?

A That is right.

Q And you were just patrolling back and forth?

A Yes, sir.

• • • •

[3418] Q Did the Deacons ever engage in target practice?

A On occasions we did.

Q Where did you engage in target practice?

A In the country, out in the rural.

Q Where in the country out in the rural?

A A place called Pine Grove.

Q Where is Pine Grove located?

A About 12 miles South of Port Gibson.

Q 12 miles south of what?

A Port Gibson.

Q On what highway is it located?

A Off of 61 on a rural road.

Q How often did the Deacons go to Pine Grove to engage in target practice?

A I recall that we went once.

Q How many Deacons do you recall was it that went there?

A Five or six, maybe seven.

• • • •

[Witness James Bailey, Jr.]

[CROSS-EXAMINATION]

* * * *

[3653] Q How many people were watching the first time you served as a store watcher?

A About 10, I guess.

Q About 10 people serving as store watchers?

A Yes.

Q The first time you went, what did you understand you were to do in your duty as a store watcher?

A If I see anyone going in stores, stop them and tell them not to go in the store because it was boycotted.

Q If they said they were going in anyhow, what were you supposed to do?

A I wasn't supposed to do anything, just report it.

Q To whom were you to report?

A Back to Pete Gusta.

Q To Pete Gusta?

A Yeah.

Q Was he a Deacon?

A I don't know.

Q What did you understand as the reason you were supposed to report back to Pete Gusta?

[3654] A Tell him anybody that went in stores.

Q What was he going to do about it if you found somebody going into a store after you informed them the store was boycotted?

A I can't tell you that.

Q What did he do? Do you know?

A I don't know.

Q Did anybody ignore the boycott and go on in despite the fact that you warned them that the boycott was on?

A Yes, sir.

Q Name the persons you stopped, if you know?

A I stopped Emerson Davis.

Q Emerson Davis?

A Yes.

Q Who else?
A Leroy Gibson.

BY THE COURT:

Give me that name again, please?

BY THE WITNESS:

A Leroy Gibson.

BY MR. SHELL:

Q Any others?
A Willie Butler.
Q Anyone else?
A A lady named—they call her "Nig." I don't know her name.
Q They call her "Nig?"
A Yes.
Q N-i-g?
[3655] A Yeah.
Q What age person is she?
A She ought to be about 70 years old.
Q Seventy years old. What did she say when you stopped her?
A She said she didn't know, because she didn't go to NAACP meetings.
Q Well, did she go on in the store anyway?
A No, sir.
Q How about Butler? Did he go on in the store anyway?
A She went on in the store and got her groceries or whatever she was getting. When she came out, I told her again, and she said she wouldn't do it anymore. The next week she started calling and had them delivered to her house over the telephone.
Q How do you know that?
A I found out.
Q How did you find out?

A I just found out. I found out because—for the simple reason I saw the truck the next week. I went by her house and sat on the corner. I sat on the corner there all day. Late that evening the truck came in. I went back down there again the next Saturday, and the truck come again.

Q What did you do about that?

A Then I told her, I say, "You are getting your groceries by telephone now, huh?"

Q What happened from that point on?

A From that point on, I tore up some of the flowers in her yard.

[3656] Q You did what?

A I tore up some flowers in her yard.

Q You tore up some of the flowers in her yard?

A That is right.

Q That was because you were punishing her for violating the boycott, wasn't it?

A Yes, sir.

Q At that time were you a member of the NAACP?

A Yes, sir.

Q Did you understand that was a part of your duties as a watcher to enforce the boycott?

A Yes, sir.

Q I believe you said you stopped Emerson Davis as he was going in a white store. Did you report him?

A Yes, sir.

Q What happened to him?

A Didn't anything happen to him. In the next two or three days, I was coming up Main Street in a car at a red light, and he was coming too. The red light was on green for me, and he didn't stop, and we had a wreck. Him and I, we got to fighting over that.

Q You had trouble over the car, not the boycott?

A It was about the car.

Q You were having a dispute, but it was not about the boycott?

A No.

Q Who else did you stop because they violated the warming [sic] about not observing the boycott?

A I didn't stop anybody else.

[3657] Q The message got around pretty soon, didn't it?

A No, that wasn't the reason. What it was, anybody in Port Gibson was probably scared. I always had a bad name all my life. See, people know that.

Q You tell me about it.

A I just did a lot of bad things when I was coming up.

Q You have still been doing a lot of bad things, haven't you?

A What kind of things?

Q You tell me about it.

A Say what it was.

Q You tell me about it.

A No, when I was coming up as a kid, all the way up until I got grown, I stayed in trouble.

Q Were you ever sentenced?

A Yes, sir.

Q For what?

A On some hot tapes.

Q On some hot tapes?

A Yes, sir.

Q You were convicted of stealing property?

A Yes, sir.

Q Did they send you to the penitentiary?

A Yes, sir.

Q When was this?

A In '70.

Q It was after the boycott started, then?

A Yes, sir.

[3658] Q Whose tapes were these?

A They were supposed to belong to Ed Snyder and Lo Williams.

Q Were these white people or black people?

A White.

Q Did it have anything to do with the boycott?

A I think so.

Q What did it have to do with the boycott?

A Well, there were several incidents with the police and everything, different things I had did.

Q What did it have to do with the boycott is what I want to know.

A I was on probation. I always stayed into something when I was in Port Gibson. When I joined the NAACP, I was kind of like a kid. If there was any fight in our neighborhood, I would jump into it, or I would break car glasses or something like that.

Q Did you throw rocks and break car glasses after the boycott started?

A No, sir.

Q Whose store had this party gone into when you had warned them not to go in the store and they went on in anyway?

A Piggly-Wiggly.

Q That is Mr. James Hudson's store, isn't it?

A Yes.

Q Have you been convicted of any other crimes besides these hot tapes things that you were talking about?

A Yes, sir.

[3659] Q What else?

A Child molesting.

Q Child molesting?

A Yes.

Q Was it a black child or a white child?

A Black.

Q When was this?

A That was in '64, I think, '64 or '65.

Q Did you do time in Parchman for that?

A Yes, sir.

Q How long have you been home from Parchman since your 1970 conviction?

A I came home in June or July, I think.

Q Of this year?
A Last year.
Q When you got back home, have you been active in the boycott?
A They wasn't boycotting.
Q Everything was quiet and peaceful?
A Yes, sir.
Q Nothing going on in the streets?
A No, sir.
Q What was this lady's name whose flowers you tore up?
A Willie Butler.
Q Willie Butler?
A Yes.
Q Is she a single woman or a widow woman?
A She is married.
[3660] Q Is she living with her husband?
A Yes, sir.
Q Did she see you tearing up her flowers?
A No, sir.
Q Were you arrested for this?
A No, sir.
Q Did she know that you tore up her flowers?
A I guess not.
Q You warned her the second time after you saw that truck there that she should not have been buying groceries from a white store?
A That is right.
Q And it was right after that that you tore up her flowers?
A Yes, sir.
Q Was this in the nighttime or daytime that you tore up her flowers?
A Nighttime.
Q Did she stop buying groceries at the white merchant's store after you gave her a lesson about violating the boycott?
A No, sir.

Q She kept on buying them?
A Yes, sir.

* * * *

[3690] Q When you joined the NAACP in Port Gibson, you knew a boycott was going on, didn't you?
A Yes.
Q And you know that it stayed on at least until you left in May of 1970?
A Yes.
Q All during that period of time, were you a store watcher?
A I was around on the streets.
Q You were watching stores, weren't you?
A Yes, sir.
Q You were required to stop people and warn them not to go inside these white stores that were boycotted, weren't you?
A Yes, sir.
Q How many different times were you on the streets serving as a watcher?
A Almost every day.
Q Almost every day there were other watchers on the streets doing the same thing?
A Yes, sir.
Q You weren't there by yourself all the time, were you?
A No, sir.
[3691] Q You never were by yourself?
A No, sir.
Q Were you furnished a walkie-talkie?
A No, sir.
Q You know that they were used in store watching, don't you?
A No, sir.
Q You never saw them?
A No, sir.
Q Did you wear a black hat?
A No, sir.

Q You know that black hats were worn by some store watchers, don't you?

A Yes, sir.

Q And you know that the black hats that were being worn was supposed to point out to the people that these men wearing these black hats were store watchers, and they will take your name if you don't observe the boycott? You knew that, didn't you?

A Yes, sir.

Q And you know that those who violated the boycott would meet such some kind of punishment such as you administered to one, and would also have their name read out in the Tuesday night meetings of the NAACP, don't you?

A Yes, sir.

Q You heard that, didn't you?

A Yes, sir.

Q And there was a publication called the *Black Times* that was put out on the streets of Port Gibson [3692] that listed the names of people who violated the boycott, wasn't there?

A Yes.

Q You have seen the *Black Times* many times, haven't you?

A Not many times.

Q But you have seen the Black Times?

A Yes.

Q Do you know who published it?

A No.

Q Where were you when you saw it?

A On the street.

Q Was it just lying on the street, or did somebody give it to you or how did you see it?

A Someone else had it.

Q Who had it?

A I don't know.

Q You were aware of it and familiar enough with it that you know it listed the white stores that were boycotted, didn't you?

A Yes, sir.

Q And it listed the names of the people, members of the black community, black people who had violated the boycott, didn't it?

A That is true.

Q You were assigned by Mr. Gusta to be a watcher. What directions did he give you as to what you were to look for in performing your duties?

A He told me to watch people going in the stores [3693] and tell them not to.

Q Did he tell you what store he wanted you to watch?

A He told me to stand on the corner by Piggly-Wiggly, between Piggly-Wiggly and Frishmen's.

Q I am not familiar enough with Port Gibson to know where Frishmen's is.

A Frishmen's. That is on the street about two doors from Piggly-Wiggly.

Q Oh, you were about in the middle of that block?

A Yes, sir.

Q At times you stood in the doorway so that nobody could get into the store, and you stopped them?

A No.

Q Never did that?

A Never stood in the doorway.

Q When you stopped them, would you take them by the arm and said, "Wait a minute. You are not supposed to go in here. This store is under boycott?"

A Yeah, I would pull some away like that.

Q You would pull some away like this (indicating). Grab them by the arm.

A I didn't grab them. I just told them to come to the side.

Q You took them by the arm, didn't you?

A Yeah.

Q How much do you weigh?

A About 219 or 218.

Q How tall are you?

A Six feet.

[3694] Q You are pretty tough, aren't you?

A I don't know.

Q Did you ever play any football?
A Yes, sir.
Q Where did you play?
A Addison High.
Q Did you ever lift weights?
A No, sir.
Q You have done a lot of running in your life, haven't you?
A Yes, sir.
Q You are a pretty powerful man, aren't you?
A I don't know.
Q What did he tell you to do about remember who wouldn't listen to you about not going in these stores?
A He told me to report their names.
Q Back to him?
A Yes, sir.
Q And you knew if you did that, those names were going to be read out?
A I didn't know what he was going to do with them.
Q You knew very well what he was going to do with them because you heard them read out at the NAACP meetings on Tuesdays, didn't you?
A I heard some of the names that I had reported read, but I didn't know that those were the same names that I gave him or not.

• • • •

[3696] Q I believe you testified that Emerson Davis was one of those you stopped when he went into Piggly-Wiggly?
A I stopped him at the door.
Q What store was it?
A I think it was Piggly-Wiggly or Frishmen's, one.
Q When was this?
A I don't know.
Q Was it in the daytime or evening or dusk?
A It was in the daytime.
Q Was he alone or was he accompanied by his wife and children?

A He was by himself.
Q Riding or walking?
A Walking.
Q Did he go on in anyhow?
A Yes, sir.
Q He wouldn't stop?
A No, sir.
Q Did you help participate in the spanking of Preacher White?
A No, sir.
Q You know Preacher White, don't you?
A Yes, sir.
Q You knew he had been spanked because he went in a white store, don't you?
A Yes, sir.
Q It was generally known around the community that if blacks violated the boycott, they were going to get punished, wasn't it?
A Yes, sir.
[3697] Q Do you know Laura Cullins?
A Yes, sir.
Q Did you participate in throwing brickbats on her house?
A No, sir.
Q Because she violated the boycott?
A No, sir.
Q You knew about it, though, didn't you?
A No, sir, I didn't know about that.
Q You did not?
A I heard about it.
Q Where did you hear about it?
A Uptown.
Q Was it while you were serving as a watcher that you heard about it?
A I heard some guys talking about it.
Q What guys did you hear talking about it?
A Calvin was asking me what I had heard happened.

Q Calvin Bailey asked you what happened?
A Yes.
Q You had heard what happened?
A Yes.
Q And you told him what happened?
A Yes.
Q What did you tell him happened?
A I just told him about the incident. About her going in the store. I don't think they did anything to her.
Q What did you tell him happened? That is what I want to know.
[3698] Q I told him Mrs. Cullins went in the store, and she was talking about what she was going to do to anybody if she thought they was going to do anything because she went in the store.
Q What did you hear?
A That is what she said.
Q What I want to know is what you heard.
A I just heard somebody say they broke the windows out of her house.
Q Calvin Bailey told you that they broke the windows out of her house, didn't he?
A No, he didn't tell me they broke the windows.
Q Who told you that?
A I just heard that through talk.
Q Calvin Bailey and you talked about her, didn't you?
A Yes, sir.
Q Who talked and told you about her windows being broken?
A I don't know who told me about the rock throwing.

* * * *

[3704] Q Didn't you go to the NAACP meetings and join the NAACP at that time?
A I went to the NAACP for a couple of months before I joined.

Q When you went to the meetings, there was discussion about the boycott being in progress, wasn't there?

A Not really.

Q Well, how did you know to go downtown and be a watcher?

A My father told me about it.

Q What did he tell you was the reason you were to watch?

A He told me to watch people going in the store and tell him.

Q Tell them what?

[3705] A Tell him.

Q To tell him?

A That is right.

Q Were you not also instructed at the same time to advise these people who were going in the stores that there was a boycott going on?

A Yes, sir.

Q And you did that, didn't you?

A Yes, sir.

* * * *

[3736] Q Yesterday you advised that you had—you testified that you had learned that Preacher White had been spanked or whipped?

A Yes.

Q I believe you testified that Calvin Bailey told you about that?

A Yes.

Q What all did he tell you as to why the preacher was whipped?

A Kept on going in the store.

Q Did he say where he was whipped?

A No.

Q Did he say the type of whipping that he got?

A No.

Q Who was supposed to have given him the whipping?

A I don't know.

Q But it was because he had been involved in breaking the boycott that he got a whipping as I understood your testimony yesterday?

A Yes, sir.

• • • •

[3738] Q When Calvin Bailey related to you about Preacher White getting whipped, did he tell you he saw the whipping?

A I am not sure.

Q He spoke as if he knew what he was talking about, though, didn't he?

A I can't say that.

Q Did he talk as if he didn't know what he was talking about?

A I can't say that.

• • • •

[DIRECT EXAMINATION]

[3740] BY MR. CARTER:

Q Mr. Bailey, were you a member of the Deacons?

A No.

[3741] Q Do you know James Whitney?

A Yes.

Q While you were acting as a watcher, did you receive your instructions from James Whitney?

A No.

Q Did you receive your instructions from any other person other than your father?

A No.

Q Did you get any instructions at an NAACP meeting?

A No.

Q Did anybody tell you what you were supposed to do when you saw someone violating the boycott?

A No, only my father.

Q Did your father tell you to watch Mrs. Butler?

A No.

Q Did he tell you to do anything to Mrs. Butler?
A No.
Q Did anybody tell you to do anything to her?
A No.
Q Why did you do it?
A I did it on my own.

• • • •

RECROSS EXAMINATION

[3751] BY MR. SHELL:

Q On examination by Mr. Carter, you stated that your father had given you instructions as to being a watcher?
A Yes.
[3752] Q Your father you were referring to as Pete Gusta, weren't you?
A Yes.
Q Pete Gusta is dead, isn't he?
A Yes.
Q How long ago did Pete Gusta die?
A December 8th, 1970.
Q December 8th, 1970?
A Yes. Wait. That was in '72.
Q '72?
A Yes.
Q Last December?
A Yes.

• • • •

[Witness Mrs. Leesco Guster]

[CROSS-EXAMINATION]

[3819] Q Well, who would call the names out of the people who they thought violated the boycott?
A It was not the Secretary.
Q I know that, but I say who did it?

A I can't recall, but it would be from—I hate to say because I am not sure.

Q Well, would Rev. Walls and Dorsey do it?

A Rev. Walls was not, you know, at the beginning of the boycott, he wasn't affiliated real close. It was Rev. Dorsey who was President, but Rev. Dorsey did not call names.

Q Well, do you recall anybody who read out the names of—

A I can't recall, but I do know they were read out.

Q Do you remember any person's name being read out?

A Yes, I remember them being read out.

Q Do you remember their names?

A No, sir, because there used to be a long, long list.

* * * *

[Witness McLawrence Bailey]

[CROSS-EXAMINATION]

[3988] BY MR. PYLES:

Q Did you ever get any copies of the "Black Times"?

A No.

Q Where did you see those "Black Times"?

A In Port Gibson.

Q Where in Port Gibson?

A I believe one of the members issued them out.

Q Members of who?

A Of the NAACP.

Q Members of the NAACP put them out?

A Yeah.

Q Where did you see them putting them out?

A I saw them from one to the other, you know.

Q You mean out on the streets of Port Gibson?

A Yeah.

Q You will have to answer out, now, so that she—

A Yeah.

Q What was the purpose of the "Black Times", if you know?

A I don't know.

Q Who published it, do you know?

A No.

[3989] Q Do you know the people you saw issuing them out?

A I know one. James Miller. James Miller for one.

Q James Miller?

A Yeah.

Q Who is James Miller?

A James Miller.

Q You told me that. Is he a black man?

A Yeah.

Q How old is he?

A Approximately 22 or 23.

Q Does he go to school?

A No.

Q Does he work?

A Yeah.

Q Where does he work?

A I believe at the Chancery Clerk's office in Port Gibson.

Q What does he do in the Chancery Clerk's office?

A I wouldn't know that.

Q Back in 1970 when he was putting out the "Black Times", what did he do?

A I don't know.

Q Do you know for whom he worked in 1970?

A I don't know whether he was working or going to school.

Q Where did he go to school?

A Alcorn.

* * * *

[3993] Q Look over on the righthand lower section of that front page and read what you see down there.

Q "The Black Times, an independent weekly newspaper published by the students of Port Gibson."

Q Underneath that, what do you see?

A "The following people were seen entering in a white-owned food store breaking selective buying practices."

* * * *

[3996] Q What was the purpose of publishing in the "Black Times" the names of these black people who went in the stores?

A I couldn't tell you.

Q Was that to shame them or to bring public pressure on them to stay out of the stores?

A I couldn't tell you that. The ones that published the paper would know more about it.

Q What effect did it have on you when you read about these black people going in the stores?

A It didn't have no effect on me.

Q You didn't care?

A No, I didn't care.

Q Well, if you didn't care, why did you go down to Hermanville to picket?

A You know, like I say, I was with the organization, you know.

Q Just a team man. You were with the organization?

A Yes. Team man.

Q Do you know James Gilmore?

A Yes.

Q Somebody shot in James Gilmore's house, didn't they?

A I heard that.

* * * *

[4060] Q Were you among those people who went out to Addison's School and stopped a white man by the name of Marvin Hynum and a black man by the name of Johnnie Shorter who were working for Sheriff McCay from delivering Borden's milk to the school?

A I heard about it.

Q Were you in that crowd?

A No.

Q What did you hear about it?
A That they got stopped, like you have.
Q They got stopped from delivering the milk?
A Yeah.
Q Why did they stop them?
A I don't know.
Q You didn't hear that?
A No.

* * * *

[Witness James Gray]

[CROSS-EXAMINATION]

[4561] Q What were you doing when the boycott started?

A I think I was mechanicing at the Ford place. I am not definitely sure. I believe I was, though.

* * * *

[4571] Q You were not trading with the white people before the boycott?

A Not no more than I had been no other time. We [4572] always had a special store. I ain't never had anything to buy but car parts. We always buy clothes and things like that on a charge account at Sears, so it didn't make no difference. Mamma always made the groceries, so I didn't know where she was making it at, what store.

Q Do what now?

A My mother always bought the groceries. I don't know what store she was making it at. She was making it at the white stores, I am pretty sure.

Q Oh, you were living with your mother?

A Still does.

Q You are not married?

A No. Right.

Q So she did the grocery shopping?

A She did the grocery shopping. I couldn't say what store she was going in. I am pretty sure she was going in Jitney Jungle. Still does.

Q Who owns the Jitney Jungle?

A Mr. Waddy and Miss Rosa Lee runs it. I guess they owns it. I don't know. Compliments of somebody.

Q Waddy Abraham?

A Right.

Q You say your mother continued to buy groceries at Jitney Jungle during the boycott?

A Still do.

* * * *

[4574] Q Why did you participate or observe the boycott, other than these parts houses and stuff?

A I had been doing the same thing all the time before it started. It wasn't no different. When I was working at the Ford place, they would send me to the parts house to get the parts. It wasn't no different. I would go buy car parts and come back and go to work.

Q Did you ever buy any car parts from Mr. Segrist after he took over when you were in business for yourself?

A Yeah. Yeah.

Q Did you continue to trade with him?

A Yeah. Still do.

Q Were you afraid not to observe the boycott?

A Well, I figured I didn't have no choice.

Q What?

A If people want to ride, I didn't have no other choice.

Q If people wanted to ride, you didn't have any choice. What do you mean by that?

A Where would I get the parts from if I didn't go [4575] get them in Port Gibson? It would hardly be worth going to Jackson or Vicksburg because I wouldn't have but one car to work on during the day.

Q So you just figured because all the other colored people in your town observed the boycott, you would observe it to some extent. Is that what you are telling us?

A Well, there wasn't no more extending than there had been no other time. That is all I was buying, a little gas from Mr. Salter sometimes. I didn't have no special place. Still don't have no special place to get gas, just the cheapest place I can find.

Q After the boycott, you knew Mr. Salter was on the list for the boycott, didn't you?

A Yeah.

Q You did?

A It said all white merchants, so he was white, so I figured he was, too.

Q Do what now?

A It said all white merchants was boycotted, so he was white, and I figured he was, too.

Q Did you stop buying gas from him?

A No, I didn't.

Q What?

A No, sir, I didn't.

Q Did anybody ever come to you and talk to you and tell you to quit buying from white merchants?

A No, sir. Never did.

Q Did James Whitney or Calvin Bailey?

A Nobody.

[4576] Q Calvin Bailey never came to you?

A No, nobody ever came to me and told me don't buy nothing from a white merchant.

* * * *

[4584] Q Look back there if you will at Exhibit C-1, the two pages. You don't have any trouble reading that, do you?

A I can't read too good.

Q Look at No. 1 where the people that signed this, Calvin Williams and the rest of them, wanted the Community Affairs Committee made up of both races—do you see that marked Paragraph 1 there? Would you rather I read it to you?

A Yes. Read it to me, please.

* * * *

[4616] Q So you were in favor of the boycotting of the white merchants because they wouldn't hire——

A I wasn't in favor of boycotting, but if that is the way it was, yeah, I feel like that. If that is the way it was, I was in favor of it. I don't know what they boycotted for. I still say that.

Q You say they ought to hire black clerks and cashiers, and if they didn't, the black people were justified in boycotting?

A If that is what they decided on, it must have been right.

Q And you agreed with their theory?

A I agree with it now. I haven't had anything to do with it. But I agree with it now.

* * * *

[4622] Q Did you ever hear of anybody getting beat up down there for not observing the boycott?

A I have heard some of them say they got beaten—said someone had got beaten. I don't know whether they was beaten—I mean I don't know who did it. I couldn't say who they was.

Q Who did you hear got beat up about the boycott?

A I ain't heard no certain—I mean I have heard more than one person say they done whipped somebody down there or something or other like that about they broke the boycott or something like that, but for instance saying who they was whipped or something, I didn't pay no attention to that.

Q Who did you say they had beat somebody about breaking the boycott?

A Some of my customers that was sitting around talking.

Q Who was named as the person that was supposed to have gotten beat up? Did you hear that?

A No, sir, that is what I am saying. I didn't [4623] know definitely who beat who and who got beaten. I didn't never understand——

Q You never heard that Preacher White got beaten up for trading with white merchants?

A He lived not far from me. I never heard of that.

Q Where do you live?

A On Highway 18 in Green Meadows Subdivision.

Q Do you live close to Merle Cullins?

A No.

Q Do you know Merle Cullins?

A I know Merle, but not close. I live about quarter of a mile.

Q Wait a minute. Laura Cullins. Do you know her?

A Excuse me. Yes, sir.

Q Do you live pretty close to her?

A No. I live about I would say a quarter of a mile. To call it blocks, I would say about four blocks, quarter of a mile or something like that. It is no blocks. It is little streets to houses.

Q There are two colored persons in Port Gibson called Preacher White, aren't there?

A I ain't never knowed but one.

Q You never heard about him getting beat up?

A Preacher White? The only I ever knowed is the one that builds septic tanks and cisterns and things like that. I ain't never heard of him getting beat up. He might have. I couldn't say that, because I wasn't over [4624] there, and I don't know.

Q Did you ever hear that Willie Myers' [sic] house got burned up about the boycott?

A No, sir. Willie Myers?

Q Lives out around Hermanville?

A Let me see. I know Willie Myers. I never heard his house got burnt up. It might have. I couldn't say that, 'cause I don't know.

Q Have you ever heard of him being threatened by somebody about breaking the boycott?

A No, sir.

Q Do you know Johnny and Susie Cox?

A Johnny and Susie Cox? If I do, I can't recall them right now.

Q I think they live out close to Hermanville, too. You don't know them?

A Cox? I am pretty sure I don't. Colored?

Q Yes. I think he works at Hood's Lumber Mill. He is about 60 years old.

A I am pretty sure I don't know him. I can't recall knowing him.

Q You never heard about his house being shot into with buckshot?

A No. I don't even know him.

Q What?

A I don't even know him.

Q You never heard his name mentioned?

A I was just thinking, trying to place who they are. No, sir, I ain't never heard nobody's house being shot [4625] in about no boycott. Who shot in it? You got any idea?

Q What?

A You got any idea who shot in it? Black or white?

Q No. I wish I did. I have an idea, though.

A No, sir. I never heard of that.

Q How about Jasper Coleman? Do you know him?

A Jasper Coleman?

Q He is a carpenter and contractor.

A Jasper Coleman? I know a James Coleman that is a carpenter.

Q How old is he?

A Oh, I don't know. I think they call his daddy Jack Coleman. That might be the one you are calling Jasper. His daddy is a carpenter, too.

Q He is about 65, I guess?

A 65? That must be the daddy, then. I presume it is.

Q Did you hear about him being threatened and his tires slashed for breaking the boycott?

A No.

Q How about Eddie Lewis?

A Eddie Lewis? Yeah, I know him. Never heard about him——

Q You heard about him being threatened and whiskey taken away from him because he bought it at Smith's Package Store, didn't you?

A No, sir. Never heard of that.

Q You didn't hear about Rudy Shields taking his [4626] whiskey away from him?

A No, sir, I ain't heard that.

Q Did you know Rudy Shields?

A I have seed him at the meetings.

Q At the NAACP meetings?

A Yeah.

Q What would he be doing there?

A Sitting down on the seat like everybody else.

Q Did he get up and make speeches?

A He might have. I never been there when he made one. I have been there and they introduced him and had him to stand and speak to the people. For instance he talking, I couldn't say that.

Q Who would introduce him?

A The president. I don't know if it was Rev. Dorsey or either Collins, one of the two.

Q What were they saying?

A They would just introduce the visitors. He was just a visitor. That is all. He wasn't no more than nobody else. He was just a visitor. They introduced most visitors.

Q Why did they pick him out?

A They didn't pick him out. All the visitors was introduced. Everytime I have been there and they had visitors, they would have them to stand.

Q He wasn't even a member of the NAACP, was he?

A I don't know.

Q He was from Chicago, wasn't he?

A I don't know. I don't know where he was from.

* * * *

[4629] Q Do you know Emerson Davis, a commercial fisherman down there?

A Yeah, I know him.

Q You heard about the trouble he had with Rudy Shields and a bunch of them about the boycott, didn't you?

A No, sir.

Q You heard about his shooting Alfred Lee Davis?

A No. I didn't hear about anybody getting shot about no boycott. No.

• • • •

[Witness Charles Evers]

[CROSS-EXAMINATION]

[4649] Q Would you state your name, please?

A My full name is James Charles Evers.

Q And where do you live, Mr. Evers?

A Post Office Box 605, Fayette, Mississippi.

Q That's your address. Where do you live?

A I live at Highway 61 South, I guess, in Fayette.

Q That's in Jefferson County, Mississippi?

A Jefferson County, right.

Q How long have you lived there?

A Since 1966.

Q Where were you born?

A Newton County, Mississippi, Decatur, Mississippi, [4650] September 11th, 1922.

Q How much education do you have?

A Well, I went through college. I don't know how much I really have. I finished Alcorn A & M.

Q When did you graduate from Alcorn A & M?

A In either '50 or '51. I was in the Army.

Q That's close enough.

A '50 or either '51.

Q Did you get a Bachelor's Degree there?

A Right, B. A., Bachelor of Arts.

Q What is your occupation?
A I'm Mayor of Fayette now.
Q Is that your sole occupation?
A I manage my family's business in Fayette.

* * * *

[4653] Q Now, on the death of your brother, where were you physically located when you received the word?
A Chicago.
Q Did you come back to Mississippi immediately?
A Yes, the next morning, as soon as I could get a flight out.
Q And following his death, you became an employee of the NAACP, didn't you?
A Right.
Q What was your title?
A Field Secretary for the state of Mississippi.
Q And by whom were you hired? Who put you on the [4654] payroll?
A Frankly, and this is the honest truth, I really don't know, because I didn't come for a salary. I came to do a job. And I was told by maybe it was Mr. Kern—I'm not really sure who told me it.
Q Well, who paid you?
A Oh, the NAACP.
Q Where did you get your checks?
A From New York.
Q You were working directly for the headquarters out of New York, weren't you?
A No. I worked for the state, but they paid me. I mean all my activity was here in the state.
Q But your paycheck came out of New York City.
A Right.
Q What were your duties?
A Well, see, a Field Secretary has no specific duties. It's a variety. And I was mainly doing it for the advancement of our people and to make conditions better for them economically, politically, socially and any way—well, the American way, to make life livable.

Q When did you begin as Field Secretary for the NAACP?

A Medgar was killed on the 12th. I came on the 13th and I went to work on the 14th.

Q Of what year?

A Of '63. I think I went on the payroll must have been maybe after he was buried. I don't remember when that was. It was on a Saturday or Sunday. It must have been [4655] a week or two after he was buried I went on the payroll, but I took up the job the next day.

Q They had a little difficulty about getting approval, according to the book, didn't they?

A Yes. We still have difficulties.

Q Beg your pardon?

A We still have them. Yes, we did have them.

Q Now, when did you terminate your relationship as Field Secretary with the NAACP?

A I don't know the exact date nor the month. I know when I ran for Congress, I took a leave of absence. And then I ran for Mayor and I took a leave of absence. I don't know just what. See, I ran for Mayor and I was elected Mayor in May of '69. So evidently I must have taken a leave of absence must have been February or March. I'm not sure. February or March maybe, of '69. Because, you know, you can't be involved in politics and represent the NAACP at the same time.

Q That's part of the constitution of the NAACP.

A Right.

Q In December of '65, you were employed.

A Yes.

Q As a Field Representative.

A Yes.

Q For the NAACP.

A Yes.

Q Now, in December 1965, had you not theretofore or even then participated in boycotting in both Natchez and Fayette?

[4656] A We didn't name it boycotting. I didn't name it boycotting. I named it staying away from them mean folks. They named it boycotting, I think. I said that where we're not treated right, not given respect of any other human being, then we shouldn't participate and shouldn't involve ourselves and shouldn't be associated with them, any of them. And I did that, I guess, if that's what you're saying.

Q This sort of staying away was going on in Natchez.

A Yes.

Q And you were one of the active participants.

A Right.

Q And leaders in that organization, weren't you?

A Yes, sir, sure was.

Q And this is also true in Fayette, is it not?

A Yes, sir.

Q Then did you not come up to Port Gibson?

A Yes, sir.

Q And when you came to Port Gibson, you conferred with the NAACP chapter up there, didn't you?

A Well, we organized the chapter up here, yes, sir.

Q Wasn't it already organized?

A Well, yes, sir. We reorganized it. It was lagging. We had organized it some time before and it had gotten slack, so we reorganized it, yes, sir.

Q You strengthened it, in other words.

A We hoped so, yes, sir.

* * * *

[4657] Q As the stay away from buying campaign progressed in Port Gibson, meetings finally became pretty much standard for Tuesday nights at the First Baptist Church, didn't they?

A Right, right.

* * * *

[4658] Q There was a committee also organized, wasn't there, out of the NAACP that made certain requests as to grievances against them?

A Oh, yes.

Q And were you instrumental in helping draw up those requests?

A Yes, I was.

Q In front of you is what has been introduced as Exhibit C-1 to the testimony of Mr. Hudson. Do you see it there in front of you?

A Right.

Q Do you recognize that document?

A Yes.

Q That's a copy, of course. Do you want to get your glasses so you can see?

A I'm not used to reading with glasses on. Yes, this is it.

Q Do you know who typed this document?

A I really don't. I'm not sure. I don't know who typed it. I know we drew it up in the church one night when we had a regular meeting; but who really typed it, I don't know.

Q Who selected the language that went into this document?

[4659] A A variety of us. It wasn't no one person. A variety of us, many of us put it in. I guess I was one of the main ones, and Mr. Calvin Williams. I guess Mr. Collins.

Q You're talking about Judge Collins down there?

A Yeah. Who else? Maybe Mrs. Thompson.

Q Mrs. Margarite Thompson?

A Right. It was many of us, but I mean these are some I can remember right off that were there.

Q Whoever drew this up had a reasonably good education, didn't they?

A I think we have, Mississippi style.

Q And the language is pretty clear.

A Thank you.

Q Was it typed that night when it was agreed upon?

A No, it was not. It was written out by the secretary.

Q Who was secretary at that time?

A We had so many secretaries. I just don't know who was acting secretary that night.

Q May I suggest it may have been Margarite Brandon?

A Might have been. It may have been. I just don't know.

Q Marjorie. You know her, don't you?

A Yes.

Q She has been secretary down there. Or do you know?

A Yes, I think she was.

[4660] Q Now, this was at a regularly held meeting or a called meeting of the Claiborne County chapter of the NAACP.

A Yes.

Q And you were there in your capacity as Field Representative for the NAACP, weren't you?

A Well, I guess you would say that, but I was there more or less because of my interest in what had been going on in Port Gibson.

Q This was your work in this case.

A Well, let me make that clear. It really wasn't, and I'm not trying to clear the NAACP, because I went contrary to a lot of the NAACP, I think if you will check with them. This is one step that a lot of them didn't want us to go, particularly Mr. Wilkins and Mr. Kern; but we did use this, yes, that meeting, to do this type of thing.

Q Did they repudiate what you had done?

A Oh, yes.

Q In what manner did they repudiate it?

A I believe I was up for suspension a couple of times. And I told them I would take the money, but I'm not going to take the position because I'm going to stay here. And they said, "Well, do just that." They carried me before a hearing in Birmingham, I believe it was, in '66, I believe it was, '67 or '66, I believe it was '67. And they were going to fire me there. And, of course, we had our

stuff together. And they backed off. So all I'm trying to say is it really was the local people of Claiborne County and myself. I don't want to lie on nobody else. It's who [4661] really was the ones doing this.

Q Was the local chapter of Claiborne County suspended itself?

A No.

Q Was it admonished for what it had done?

A No, not that I know of.

Q I might say to you, Mr. Evers, that Mr. Carter here has furnished us a constitution of the NAACP. I've studied it rather carefully, and I believe there is a provision in there that if something is done contrary to the National, that the local can be called on the carpet.

A Right. Well, they called me many times.

Q I'm not talking about you. I'm talking about the local Claiborne County chapter.

A Oh, I don't know whether they did or not.

Q You're not aware of it.

A No, I'm not. I know they did call the Adams County, which you're not involved. I know Natchez, they did call them on, I know that, about the same thing.

Q Now, at this particular meeting where Mrs. Thompson, Judge Collins, Calvin Williams, and perhaps Reverend Dorsey, whom I suggest was also active in this——

A Yes, he was active in this, President, yes, sir.

Q And there were many others, like Nathaniel Jones.

A Right, sure was.

* * * *

[4663] Q But you wouldn't have presented this if you didn't have the approval of the Claiborne County chapter.

A Well, of the people, all of them wasn't members of the NAACP now, I'll tell you that, or we would have been in good shape; but many of them were just innocent citizens of the community.

Q They were interested citizens.

A Right. Many of them were. They wasn't all NAACP members.

Q But this was a called NAACP meeting where these matters were discussed.

A Yes, it was a regular meeting.

* * * *

[4666] Q Who, other than you, would be the same persons present at all three of these several meetings where these were discussed and presented?

A I guess I was the only one. I have been the prime mover in all of them.

Q During this period of time, you were the Field Representative for the NAACP.

A Yes.

* * * *

[4683] Q Have you been there in Port Gibson, walking around observing the businesses?

A Oh, yes, I have been in every store there, every last one.

Q When you were in the stores, did you discuss with the merchants——

A No. I just go in and look around and see how the traffic was. I could see they could always use at least a part-time black, and I noticed where the blacks were working. I didn't want them to be saying something about I didn't know what I was talking about.

Q You were casing the place, in other words.

A Well, you are naming it. I went in there to make sure that I was——

Q You are familiar with the term "casing", aren't you?

A Well, since Watergate, I'm familiar with quite a few terms.

Q This way predates Watergate. You just don't know what the word "casing" means?

A I think it means observing, doesn't it, watching?

Q Looking the place over.

A Right, to make sure that they could use somebody, they needed somebody. And that's the conclusion we reached [4684] and reasoned with them that they were hiring them in, should I say, minor positions, a few, one or two. But all we were saying—I know it's hard for our white brothers and sisters to understand us; but what you've got to understand, Attorneys, that unless you give young blacks or coloreds or whatever we were a chance to look up as all of you had a chance to look up and see a judge or see a lawyer, when are we ever going to be anything? You've got to understand this. That's all we were trying to say to them. You will probably say, "Well, she is a cashier at Piggly-Wiggly and some day I will be a cashier." But if you never give us that chance, how are we going to make it?

Q You decided to be sure you got that chance by boycotting the community.

A Well, let me tell you this, Attorney. My answer was whatever it took beyond—short of violence, I was willing to do it to give my folks a chance.

Q You were willing for a little violence to occur, too, weren't you?

A No, I wasn't looking for no violence. I never struck nobody. I've said some things that, if somebody was to have no more sense in their head than to go in there, they might shoot at them, but I never did anything about it at all.

Q On one occasion you made a comment on national television, shown all over this nation, that in the event they violated the boycott, the black people, you would break their damn necks, didn't you?

A I don't know whether I said I'd break them or [4685] I said they should have their necks broken. I don't know what I said, the exact wording or not. And I said this, and I say it again, I'm not going back on my words, I still feel that if a black person or a white person is mistreated by any individual and denied and he ain't got no more sense than to go in there and spend his

money and his time, then, yes, sir, I still say he's no better off than—we just don't need him.

Q That's not what I'm asking you about, though. I'm asking you about the boycott and your admonitions to your people that if they didn't observe the boycott and if they were caught violating the boycott, you would break their damn necks.

A I don't think I said I would break their necks. I think I said their necks needed breaking. I don't think I said I'd break their neck. I'm quite sure I didn't say that. Can you read that? Have you got some place where I can see that or hear that. I want to make sure. If I said that, I'll admit it. I never deny something I say.

Q You know Jerry DeLaughter, don't you?

A Oh, I know Jerry very well. What did he say?

Q If Jerry DeLaughter quoted you as saying that, you would accept that as being correct, wouldn't you?

A Not necessarily. I was fixing to say I thought he said he saw it on TV and heard it. Have you got it on tape? That's the only way I really would accept I said that.

Q Oh, you wouldn't accept it——

A I believe you have it on tape, don't you? Do [4686] you have it on tape?

Q It's on tape.

A Well, could I hear that then? Then I'll know whether I said it. If I said it, I'll admit I said it.

Q We will see about that in a minute. I want to ask you about a statement of Jerry DeLaughter in the Memphis "Commercial Appeal" on April 22, 1969. It carries the byline of Jerry DeLaughter. There is a long discussion about what the conditions were and what was going on there.

BY THE COURT:

What is the date again, Mr. Shell?

BY MR. SHELL:

April the 22nd, 1969, Your Honor. (Continuing):

Q I refer to the last few paragraphs with regard to what I had asked you about. Would you read that paragraph out loud, please?

A "He urged the restless crowd to intensify a boycott of white merchants which was begun Saturday. 'If we catch you going in any of them racists' stores, we're gonna break your . . . neck,' he said."

Q It says "your" blank "neck".

A I probably said "damn neck." "If you take another whipping from a white man, you're a coward." I say that now. "It's time we quit talking 'quiet and peaceful'. We're tired." And I still say that. "I don't mean we ought to throw bricks or break things." I say that. "There's better ways to get to them than that." I said that then and I say it now.

[4687] Q You do recall making this statement.

A I do recall making that last one. I don't know why I said we would break their neck. I think I said, "Their damn necks should be broken", or something like that.

Q You said something to that general effect, didn't you?

A Yes, sir.

Q When April 1 arrived and you felt that these things you had been requesting had not been satisfied, you called or met with the NAACP chapter in Claiborne County in Port Gibson at the church during the afternoon, didn't you?

A Right. Yes, sir.

Q And did you make a speech at that time?

A Well, usually I'm always speaking, so I probably did, but I don't know.

Q You're some kind of speaker, aren't you?

A Well, I try to be. It's my only weapon.

Q From that point, did you march on the streets of Port Gibson and congregate ultimately in front of the courthouse?

A I'm sure we did. Yes, sir, I imagine so. We did march.

Q This is when the boycott was first called. This should be vivid in your memory.

A Yes, I'm sure we did.

Q What size crowd was present at that time?

A I'm about like the paper, I'm sort of poor at [4688] estimating crowds. I'd say there must have been about 400 or 500.

Q The church was full of people.

A Oh, sure, and all outside and all on the streets.

Q And at that time you called for a boycott to be put on all of the white merchants in Claiborne County, didn't you?

A I think I said, "Stay out of all of the stores." I don't know whether I say boycott. I guess it all means the same. I said, "Stay out of all the stores where those mean, racist white folks have been killing our folks until they quit killing us."

* * * *

[4692] Q And you did speak to them on April 1.

A Well, I don't know the date, but I did, during that march, yes, sir.

Q Well, when the boycott was first called.

A Oh, yes. Every march, I was there.

Q Weren't you back there the next day?

A I imagine so, yes, to make sure that things were going good.

Q And you advised the people to stay out of the stores, didn't you?

A Yes, sir.

Q You didn't want to see any of them going in those stores.

A I sure didn't.

Q And you advised them that there would be [4693] people watching them to see whether or not they went into these stores, didn't you?

A Yes, sir, I sure did.

Q How did you know there were going to be people watching them?

A Because I was going to be one of them.

Q Were you one of the watchers?

A Yes, sir. Never touched nobody. I watched them, to show how effective we were. Every man likes to know his strength sometime.

* * * *

[4694] Q Do you remember stopping somebody coming out of a store belonging to Mr. and Mrs. Norman Ellis and telling them the store was boycotted and they shouldn't go back in there?

A No, I don't.

Q Did you ever stop anyone and tell them—

A I don't remember ever stopping anyone. Most of my remarks were in public gatherings. I'd tell them to stay out of the stores. I did it right in the gatherings and I would tell them to stay out of the stores. I did that at every public gathering. But I didn't go out patrolling the streets. Usually what I would do, I would go and park and just sit. And the mere fact they saw me sitting there would be a deterrent if anybody wanted to go because they respected me that much, and I appreciated that.

Q Did they respect you or fear you that much?

A They respected me and loved me that much. They don't fear me.

Q They don't?

A No. I'm the best thing that ever come their [4695] way and they're the best thing for me.

Q You're satisfied of that.

A I certainly am.

Q When you would see black people going into white stores, what, if anything, would you do?

A Not a thing. Frankly, I never saw them. The only lady that I saw going was this lady, this real light-skinned lady. No one ever saw anybody but her. And we just wrote her off as one of those—and I know I said

in the meeting, "The little colored folks that's going in there, they ain't enough to keep them in business, so don't worry about them. The rest of them, the majority of us stay out of there. Because being in business myself, I know you're operating on 20 percent, anyway. And when you're losing 60 and 70 percent of it, you can't survive. They'll come around." And all we was talking about was coming around to hiring our folks and giving us courtesy titles, giving us a decent pay. That's all we was asking.

* * * *

[4700] Q I show you what's been introduced into evidence as Exhibit C-23, which purports to be a photostatic copy of a minute book with names of members. Turn to Page 2, I believe it is. See the very top of that page, the caption.

A The Deacons?

Q Right.

A I see it.

Q And is there not there a list of individuals with areas to the right of their names indicating the payment [4701] of dues or monies?

A I don't know what it indicates, but I see some figures there. I don't know nothing about that.

Q You're not acquainted with that organization at all?

A I'm sure not, not the Deacons. I know they had it in Louisiana. I know they came to Fayette, as I said. They did come to Fayette. The man himself came there, and we ran them out. I said, "We don't need anybody. We local folks take care of our own business. We don't need you here." Even when some of the students came down from the college, we wouldn't let them get involved in it.

* * * *

[4705] Q Let me ask you this. Look at Exhibit C-23 again on Pages 2 and 3. Look at those names and see if you don't recognize those as being local people there in Claiborne County.

A I do, sure. But, like I say, I didn't know they were dong this. I had no idea they had been paying. I know we wasn't paying, not that I know of. Remember, I was only in Port Gibson about once, maybe twice a week. What they was doing, I don't know. I'm not going to say it didn't go on. I wouldn't dare say that. But I didn't know, and I know the NAACP had better not have been paying them because we didn't have no money to be paying nobody with. If they did, I'd like to know where the money come from. If all those men get $50 a week, that's—

Q I believe that's 50 cents paid in as dues.

A Oh, 50 cents, oh.

Q That was a voluntary payment on their part, I [4706] believe has been testified to as their dues for the organization.

A Oh, I didn't know about that. I wasn't a part of any of that at all.

Q When you were there this once or twice a week during the period of the boycott, were you aware that there were people standing on the street as store watchers who wore black hats as symbols of their presence as store watchers?

A I knew that they wore black hats. Now, I don't know what their reason was. I know they wore black hats.

Q It was a uniform type black hat, wasn't it?

A I don't know whether it was or not.

* * * *

[4713] Q Were you ever aware of any occasion when Mr. Williams organized a group of marchers, a small group, and marched them as if they were in a military drill formation either on the streets of Port Gibson or behind Mr. Hudson's store in the vacant area there?

A I don't know if Mr. Williams did or not, but we did have that type of thing, because we was trying to show the discipline and let them know how to be erect and how to be courteous and how to walk straight and

stand straight and look like we were somebody. Attorney, the whole thing was we were trying to impress upon them that we can do something and that we are somebody, we ain't just a bunch of thieves, and we aren't dirty and we aren't filthy and we aren't liars. I think it's the long, round about way of doing it, but we were trying to convince our white brothers that we are somebody. And we might have went in a bumbling, crazy way, but I think it all boils down to that. Just give us a chance.

[4714] Q You were trying to impress them with your strength in numbers, too, weren't you?

A Right, absolutely. And we were trying to show them we were 80 percent of their community, and at least we should have at least 2 percent of the jobs or 1 percent.

Q Who was in charge of the group that were drilled as an erect marching organization?

A I think Mr. Williams. I'm not sure. I don't want to put too much on him, but I think Mr. Williams was. Like I said, I wasn't up there that much when all of the details went on, but I think he was. Now, I had very little to do with that kind of thing. Like I say, I was up there once or twice a week and most of it was at rallies and sometimes ride up there just to see how the town looked and case it.

Q Your present recollection is that Mr. Williams was the person.

A I think so. I don't want to say for sure about it. I don't know who he designated to take over from him. But I think that most of it—I remember we had the old Army background and we know what it takes. Most of us did that. We believe in that. For instance now, my officers salute me. It's one of those military things that I have.

Q Your background is military.

A Right.

Q And you know something about close-order drill.

A Right.

Q And how to column right and column left.

[4715] A Right.

Q And all of the various drill formations, don't you?

A Right.

Q Do you know whether or not the drilling was done with weapons?

A No, I don't think so. I'm almost sure not. I don't think so. I never heard of it.

Q If it were, it was not within your knowledge.

A It certainly wasn't, no, sir.

Q How would he go about recruiting his drill people?

A It was all a volunteer thing. All of our activities was people who, if they were going to be in the protective squad, who was going to be working tomorrow, who was going to be available and so forth. And it was sort of a day-to-day thing. And in the summertime when everybody was out of school, it was much easier to have youngsters because they wasn't doing anything. That's the way it was done, more or less on a voluntary basis. They all volunteered.

Q Someone has to organize.

A I'm saying Mr. Williams. I think Mr. Williams. I'm almost sure Mr. Williams was in charge. I'm almost positive of that.

Q Now, these were the people that were out on the streets to protect the youngsters.

A Yes.

Q So they would be mature people, would they not?

[4716] A Some of them were and some of them were not. Now, we had some youngsters and some high school kids who were out there, too. So I'm really telling the truth about it. They wasn't all my age and your age. There were some of them just high school, big huskies who were out there, too.

Q They were pretty impressive looking physical specimens, weren't they?

A Oh, yes. They could take care of business, if necessary, I think.

* * * *

[4733] Would it surprise you to know that George Henry Walker's name is listed among the Deacons here?

A No. I was surprised to see any of them as Deacons. I know he was one of the prime movers of our security and in securing the safety of our pickets. I know that. But I didn't know that they had formed that at all.

* * * *

[4737] Q Do you remember the occasion when news came of the assassination of Martin Luther King? Were you in Port Gibson shortly after the news came of his assassination?

A I don't know. I was on my way somewhere. I don't remember what I did, really. I just don't remember. That was such a shock and he and I were so close, I don't remember what I did. I was on my way some place, either to Fayette or Port Gibson. Wherever I was going, I didn't do much.

Q After the shock of the news kind of settled down on you, didn't you go back to Port Gibson to urge the people to get back on this boycott and hold tight and hold fast?

A Not about Martin. I didn't have nothing to do with that.

Q You didn't have anything to do with that?

A Oh, no.

Q Are you aware of some burnings that took place, some buildings of the white people in Port Gibson [4738] following the announcement of the news of the assassination of Martin Luther King?

A I think I heard something about it. But, Attorney, I guess I'm the one guy who was in three or four different towns in this state saying "Don't do it." And I think even here in Jackson, I was here and I was all

over telling them, "Don't do it." I'm not trying to ask you to do me no favor. I think that somewhere I've used some judgment, and I think that the one thing I can say is that we haven't ever used the NAACP or me to go out and physically destroy anything or anybody. And I've always tried to tell my folks that violence is not the way. "Martin is gone, and that's not the thing to do now." As I said about my brother, and I will do everything in my power that he didn't die in vain, and the way to do that is through political and economic and education. And I've tried that and I'm still trying and I'm going to keep trying.

Q You also advocate on occasion and have corrected the members of your family, your black family, meaning the whole race of your people, when they do wrong, don't you?

A Right. You see, every family has a right to discipline. Every race has a right to discipline. Now, there are many ways you discipline people. The white race during the early race, they formed the Ku Klux Klan to whip them in line if they got out of line. The Germans found other ways to do things. But we feel like our way is a good tongue-lashing and embarrassing them and showing them how backwards they are to do things. And this has hoped [sic] us. You [4739] haven't ever seen where we've taken anybody out and lashed them or beaten them.

Q You haven't paddled them?

A Pardon?

Q You haven't given them a whipping?

A No, sir, I haven't. I know I haven't. I never advocate it, no, sir. I say we've got a right to discipline. I say we have a right to discipline and I said even—about the breaking of the neck. But no one has ever gone and beaten. Some of them need it, I'll admit.

Q In your book, didn't you suggest that a good whipping sometimes was a good way to get people in line?

A Well, I still say it's a good way because my Mama whipped me and that's what kept me in line.

Q Haven't you advocated whipping these people who got out of line in the boycott?

A. Not physically whipping them. I didn't say whipping. I said it would do them good to give them a good whipping. See, there are many ways to whip people.

Q Didn't you also suggest they might have a brickbat thrown through their windshield?

A Oh, no.

Q You didn't say that in your book?

A No. I said some people suggest. Read my book good because I wrote it. I said some even suggested throwing brickbats through the window or put sugar in their tank. I said all that. But that's not my way of doing.

Q We're going to talk about your book in detail later. I just want to see if your memory is good on what [4740] you might or might not have said in your book. Now, this tongue-lashing that you would give these people to embarrass them where they were violating the stay away from the buying in the white stores, where would these tongue-lashings occur?

A Wherever it was necessary, in meetings or on the streets or wherever we thought that they needed it. That's the only way we had. "You know you shouldn't do things like that. Now, why would any of us go and buy from people who have done called you 'Nigger' and had something to do with killing or beating you or paying you nothing? You're not going to get nowhere until you stand up and be somebody and stay out of there." I say that, and I still say it every day now. I'm still guilty of that.

Q When you discovered or your people discovered someone violating the boycott, their names would have been read out and were read out in the NAACP meetings, weren't they?

A Right. That was one of our ways of doing it. And nobody bothered them, as I know of.

Q Well, they bothered them in the sense of giving them a tongue-lashing, didn't they?

A Oh, yeah. But, see, that's freedom of speech. You have a right.

Q I didn't say you didn't have the freedom of speech right. I agree. But I'm asking you isn't that one of the ways you had to punish them.

A Right. To embarrass them.

Q And you would call them Uncle Toms.

[4741] A Right.

Q And Handkerchief Head.

A Right.

Q And the White Man's Nigger.

A Right. And most of them were guilty of it, those that did it.

Q I'm not questioning their guilt or innocence. I'm asking you if this didn't happen.

A Right, sure.

Q And they would be kind of ostracized socially because they had done these things, wouldn't they?

A Well, I guess to answer that I have to go a little around it. We have found that white people who didn't approve of what other whites did sort of pushed them aside and it worked effectively. We found that a lot of whites in Mississippi would be different if they didn't think their neighbor would ostradize [sic] them, so we sort of learned this. I guess the answer to the question is yes.

Q The answer is yes, that was what you were doing was giving them social ostracism, wasn't it?

A To try to teach them how to behave constructively.

Q Whip them back in line, wouldn't it?

A That would make them understand that they've got to do right.

Q They got the message. Kind of like hitting an old mule with a two by four.

A Well, no, we don't. We didn't hit people with two by fours. You see, our way of discipline was a little more subtle than our precedessors had been, and we

thought [4742] that we had that right, and we still think that, to keep people in line and respectable, the same as my job as Mayor. You'd be surprised the things I have to do to keep people in line.

Q No, I wouldn't be surprised. I call your attention to April of 1969. Was the boycott still supposed to be on in April 1969?

A I'm sure it was. I think so.

Q You recall the occasion, I'm sure, because you recited it in some detail in your book, of the death of Roosevelt Jackson. Where were you when you learned that Mr. Jackson had been killed?

A I was in Fayette.

Q And what happened when you learned of this?

A The first thing I did, they said, "Mayor, come up here quick because there's going to be a riot because people are getting all in the street." I said, "Look, just hold them until I get there." And I jumped in my car and went about 90 miles an hour up the road. And I got there and they was all in the streets, everywhere. And all I tried to do, I tried to talk to them and tell them, "This is not the way. Let's just hold on, just cool down, and come on back around to the church." We went back around to the church.

* * * *

[4744] Q And you made a talk there on the porch.

A Right.

Q From that point, you led them in a march to the church?

A I think so, Attorney. I'm not sure. I think so. Let me explain something that most people don't understand. During the time of people raving and confusion, you've got to do something to get that steam off. And my method has always been and has worked, just march, let them walk. You've got to do something. And every policeman will tell you in his town that I marched, just don't stop them, we'll take care of it. That's the Natchez Police Department, that's the Hazlehurst, the Crystal

Springs, that's the one in Port Gibson. Don't block them, just let them march. I will stay there. We just walked and walked until they finally get all right and then you can talk to them. But once they have blocked them, it would have been one terrible thing. So that was my way of doing. I did it right here in Jackson, right in this same town. So it's a method of cooling people off and letting them get their [4745] frustration out by walking and showing "I can walk these streets." And that's the one thing we had. Rather than throwing bricks and shooting and getting somebody killed. If you will notice, we never had a single bad confrontation except one, and that was that Jackson State thing. If I could have gotten here—and I'm not bragging—that wouldn't have happened. I just couldn't get here in time. So the answer to your question was yes, we walked and we walked, and the Sheriff will tell you this. He and I worked very closely on these kind of things.

Q You walked all the way from Mr. Jackson's home to the church.

A Right.

Q And there was a meeting there.

A Right.

Q And you made a talk.

A Right.

Q You called for an intensification of the boycott at that time.

A I believe I did.

Q In fact, you insisted that everybody stay completely out of the white stores.

A Right.

Q Regardless of whether some of them had been taken off the boycott or not.

A I don't know whether I said that or not, but I told them to stay out of town.

Q Leave town completely.

A Right.

• • • •

[4748] Q So at that time you made a talk with reference to the dismissal of the two policemen who were involved in the shooting of Mr. Jackson.

A Right.

Q If I understand and recall your words, you pointed out, of course purely from hearsay, from what others told you—

A Right.

Q —that Mr. Jackson was charged with interfering with the officers attempting to make an arrest earlier in the day or earlier in the evening.

A Right.

Q And from that point they had apparently gone to his home and he apparently had been drinking excessively.

A Yes, sir.

Q And they attempted to arrest him and the black policeman held his arms and the white policeman shot him in cold blood.

[4749] A His wife stated that.

Q His wife did what?

A Stated that. She was looking at it.

Q And you called for the dismissal, not the suspension, but the complete dismissal of both of those policemen.

A Right.

Q And you also called for the dismissal of the Chief of Police, Mr. Rodney Porter, didn't you?

A I don't know whether I did or not. Maybe I did. I know I called for the two. I'm not sure whether I said the Chief or not, but I know I called for the two.

Q Then you made a talk in connection with this to the crowd assembled and you advised them that they must not break the boycott because you were emotionally disturbed yourself, weren't you?

A Yes, I was.

Q In fact, you were quite angry, weren't you?

A I guess I was, really, Attorney. To answer your question, the answer would be yes. I guess I've seen so

much bloodshed and so much mistreatment of folks, you just can't stay cool forever after you've seen your folks like that.

Q And at that time you told them that watchers would be placed on the streets and they'd better not break that boycott.

A I don't know whether I did or not. If you've got a tape of it, I'm sure if I said it I said it. I just don't know what I said that time.

[4750] Q After lunch, I want to show you a film where you said that.

A Well, if I said it, I agree to it. I'm not going to deny something I said.

Q You recall that there were films made of some of your marches and some of your speeches.

A Right. The press was always following around. They were there, and the FBI and the Highway Patrol, they were always there.

* * * *

[4764] Q I had asked you before lunch, when we recessed for lunch, about this book called "Evers" which had been published by the World Publishing Company.

A Right.

Q And I ask you if you will examine this and—

A Correct.

Q You will identify this as a copy of your book?

A Right.

Q Now, if you will, follow me while I read from this book.

A Just read it. I know what's in it.

Q You know what it says. Have you memorized it?

A I know. I wrote it.

Q All right. I'm reading from Pages 8 and 9 of your book. "No more women making $4 or $5 or $10 a week for 6 or 7 days' work, no, sir. I don't know of a single woman now who makes less than $30. The woman's biggest friend was the boycott. We tried it first in Natchez. Just pointed out to people how they were being

robbed. Nobody believed a black man could walk the streets of Natchez and tell white folks they were wrong. 1,500 of us did, though."

A Right.

Q "We just got up on the sidewalks and told people how wrong and mean they had been and that we weren't going to take it. This kind of thing gave the black folks there some guts. And we didn't use violence either. We [4765] used the old spiritual method. You ought to come down and see how we do. We have our own choirs, our own soloists, our own preachers. I always say God will deliver us, but we've got to help him, got to register, got to own something. We took nickels and dimes and made our own cooperatives, liquor stores, groceries, clothing stores. We stopped shopping where they wouldn't hire blacks and pay them at least $30 a week. They came around. Sometimes we had to discipline our own people, just like Mama did with us."

A Right.

Q "Turn [sic] them a little bit."

A Right.

Q "Nothing wrong with disciplining your own family. I'm not saying we beat anybody up. We took care of them in a way they understood. People would catch them coming out of an uncooperative store and take their bags away from them, destroy the bags, while they were paying to keep us in slavery, or a motor would lock on a car. There might be a bit of sugar in the gas tank. There occasionally may be somebody—I didn't do it—but somebody would send a brickbat through a window around midnight with a telegram saying, 'You shopped at such and such a place.' "

A That happened.

Q You agree with all of these things that I'm saying?

A It happened.

Q "See, people don't always obey because they want to. They usually obey because they have to. And they have to stop spending their money in racist, bigot-hater

[4766] stores." Is that a fair quote from your book on Pages 8 and 9?

A Exactly.

Q Now, this was written in 1971.

A Right.

Q At this time, there had already been the boycott in both Natchez and Jefferson County and your hometown of Fayette, or your town of Fayette rather.

A Woodville, Hazlehurst, Crystal Springs, Jackson.

Q And Port Gibson. And the things that you're saying about how this matter was accomplished were true in Port Gibson as they were in these other communities.

A I didn't say that. I said there are some things that happened. I didn't do them, but I was told these things happened.

Q Right.

A And I didn't do that.

Q Well, you were advocating them, weren't you, in your book?

A No, not necessarily. I was telling what was done to discipline, some of the disciplinary acts that was taken. I didn't say I did it nor did I say anybody in Port Gibson did it, nor did I say that anybody in Natchez did it.

Q Well, don't you know that there were reports that these things happened in Port Gibson?

A Well, there were reports here that we cut off somebody's hair in Jackson down on Farish Street. We didn't do any such thing.

[4767] Q You haven't answered my question, Mr. Evers.

A I heard that. I heard that.

* * * *

Q Now, on Page 131 of your book, where you were talking about what was done in McComb, I believe it was McComb in 1965—or perhaps I'm mistaken. It must have been Natchez. You stated, "I had all of my boys stationed at the Holiday Inn with rifles."

A Oh, no.

Q Well, read your book here.
A "I had all of my boys stationed"—

[4768] BY MR. ROYALS:

I want to reserve an objection here. I will tend to it all at one time, if it's all right with the Court, when he gets through with the book rather than to object to the individual things.

BY MR. SHELL:

I don't know what he is talking about.

BY THE COURT:

What is the purpose for the objection, Mr. Royals?

BY MR. ROYALS:

Well, the first passage was that it was not tied into the Port Gibson boycott. Mayor Evers said that he wrote that about some of the things that happened and he didn't say any of it happened in Port Gibson. So I think it would be prejudicial in the record. And now we're talking about some stationing of armed people in Natchez that he allegedly mentioned in his book. So I make the same objection to anything from the book that doesn't have to do with the Port Gibson boycott. The reason I didn't object earlier is that I don't know what it's going to be until I hear it, so I was going to wait.

BY THE COURT:

Mr. Shell.

BY MR. SHELL:

[4769] You want me to respond to that, Your Honor?

BY THE COURT:

Yes, sir, I do.

BY MR. SHELL:

My response, Your Honor, is this: this book is written on an overall basis. It would be impossible to read the entire book to Your Honor. The book goes through a pattern of how boycotting was carried out and how the enforcements of the boycotts was carried out, with certain specific instances. But it all goes into the overall picture of the modus operandi of the boycotts as they were carried out all over the various communities in the state. And I think it's pertinent to point out that these incidents occurred in this town just a few miles away from Port Gibson where the next step was to come to Port Gibson, or the next step was to go to Fayette and the next step was to come to Port Gibson. It's kind of a chain reaction sort of thing, Your Honor, and I submit it's admissible for whatever probative value Your Honor would see fit to give it.

BY THE COURT:

I'm going to overrule the objection.

A Attorney, may I tell you, this is an altogether different situation? This here is when we were desegregating hotels and motels around. This had nothing to do with boycotts at all, not a thing. I do remember. We did have own own security because, if we hadn't had, I probably [4770] wouldn't be here now. We did have that, but they were only in the places where they had all these Klansmen. And at that time Mr. Bryant, our President in McComb, had been bombed a couple of times, his home. And two or three of them, their homes had been shot in. Mr. Quinn's home had been shot in. And I did travel with protection. That is right. I did have my security there, but it wasn't nothing about no boycott. It was about desegregating the Holiday Inns, desegregating the Downtowners and the different hotels

across the state. That's what that was, not about boycotting.

Q I understand.

* * * *

BY MR. ROYALS:

Your Honor, at this point, I would renew the objection on the basis of the testimony of the witness here that it had nothing to do with the boycotts. The only way I could see this would be admissible would be as a declaration against interests on the part of Mr. Evers, who is an individual defendant. I would think the declaration against interest would have to be specifically tied to the events and not just to show a propensity.

BY THE COURT:

[4771] I believe he has explained that, Mr. Royals. He says it had nothing to do with boycotting, that there had been violence, that is, the headquarters of the National Association for the Advancement of Colored People had been bombed; that they had had threats and violence and that he did have protection, and that these people were used as security. I think that he's answered it. And for that reason, I'm going to overrule the objection. I think he has probably given a satisfactory answer to this thing. All right.

BY MR. SHELL (Continuing):

Q Now, on Page 132 of your book, Mr. Evers, you made the statement which I quote: "We had guns and hand grenades and everything it took to work with, and we meant to use them if we had to."

A Yes, sir.

Q Do you recall that statement?

A Yes, I do. That was in Natchez.

Q That's right. Now, where did you get hand grenades?

BY MR. ROYALS:

Your Honor, I raise a different objection, I think, because we are getting into another area here about where did he get hand grenades. I know this is cross-examination, and I know that cross-examination is liberal and wide-ranging in Mississippi, but I think it does [4772] have to be relevant and material to the question at hand, rather than to say "Where did you get hand grenades" or "How did you get hand grenades?" in an unrelated incident that has not been tied into this boycott here whatsoever.

BY THE COURT:

I think that Mr. Shell is on solid ground to talk about the overall picture of this thing, Mr. Royals, and I'm going to overrule your objection.

Q Could you answer the question?

A The question is answered very simply. We had friends who happened to be in part of the Mississippi National Guard, and occasionally they were able—who worked in there—they were able to get out a few hand grenades. And we didn't ever want to use them, but it was a matter of protecting ourselves. We never used one of them and they have been destroyed since then, but we did have them. I'm not going to lie to you. And I've still got my guns now. I'm not going to lie to you about that. But I don't use to [sic] them. I hope to God I never have to use them.

Q I hope you don't, too. On Page 133 and 134, again we're talking about Natchez, but I'm going to ask you if this isn't relevant to all of the places where you were going to have the boycotts called. Let me read the sentence to you first. "Every time we'd go to a town like Natchez, we'd give the City, the Chamber of Commerce, the Board of Education and the City School System certain demands we wanted them to meet, and we'd give them a certain date to [4773] meet them. We'd say 'Integrate all the school facilities. Hire blacks as

clerks in the stores. Hire black policemen, black deputy sheriffs.' We would take them town by town. One of our 12 demands was that Negroes be addressed as Mr. or Mrs. or Miss and that they quit calling us Niggers and Boy and Girl and Auntie and Hoss. But this was something the bigots never could agree to. We gave them 10 days to meet our demands and then we started our marching and picketing and slapped our boycotts on the town. What we're saying by boycotting is 'White folks, get your foot off our neck. White folks, turn loose some of that money and let us have some jobs. White folks, give us some better schools. White folks, let us have a part in the policy making. White folks, we're just as good as you are.'" Is that a fair comment?

A Attorney, I said it then and I say it now. I'd change not a word of it.

Q You agree with that now as you said it then and as you have said it constantly.

A I say it again. We have got to have a chance. All we are asking for is an equal chance to make a decent living and to be treated like everybody else. I'll die saying that, regardless of what it costs me personally. That doesn't matter a bit. Because we're not asking anything we're not entitled to.

* * * *

[4806] Q Now, under Section 2 of Article X, where the grounds for expulsion, suspension or other disciplinary actions are delineated here, it provides that "The National Board of Directors upon satisfactory evidence that an officer or member of the Association or of a subsidiary unit of the Association is guilty of conduct not in accord with the principles, aims and purposes of the National Association for the Advancement of Colored People, as set out in this Constitution and By-Laws for Branches"—that is, Exhibit C-40—"and as defined by the National Board of Directors and Convention, or is guilty

of conduct inimical to the [4807] best interests of the National Association for the Advancement of Colored People, may order suspension, expulsion or other disciplinary action against such officer or member, after full hearing in accord with the provisions of this Constitution." That's correct, is it not?

A Right.

Q Was it under this section that you were called on the carpet? I believe you said you were called on the carpet.

A I don't know what section I was called under, but I was called on it a couple of times.

Q You were not expelled, were you?

A Well, I think they withheld it once or twice, but I finally got it back. You see, it was a sort of hearsay thing, and particularly the thing of the Natchez, and I must say Port Gibson was one of the problems that it had with me on it. And we did have problems, yes. I think the record will show that. It's no point in me saying otherwise.

Q Well, after this hearing, you were given a clean bill of health, weren't you?

A No, not really. Well, after I went on a leave of absence, I ran for Mayor, I think, and really never got a clean bill of health and just faded on out of the picture, I guess, by running for Mayor and I was elected, and I never did go back.

Q Well, were you officially discharged?

A No, not really. But it was just a matter of time. If I hadn't run for Mayor, I would have been.

Q You think you would have been?

[4808] A Oh, I know I would have been. There is no question about it.

Q That's conjecture on your part, isn't it?

A Well, I know I wasn't doing everything according to Hoyle, and I think when you do that as part of an organization, as you read in there, there are certain rules and regulations that you have to do. If you don't do

the way they want it done, then you are subject to be suspended or fined, and I knew that.

Q What weren't you doing according to Hoyle?

A I think the main thing was our selective buying; as you say, boycotting. See, here we knew there were certain things that we had to do to get certain gains or certain concessions. And many times the National Office didn't see it that way. In my organization, you're sitting in New York and didn't know what's going on down here and you can't tell us what to do. As I say, we local folks were the ones who did, and that's why I don't want to blame them. I'm not trying to protect them. I want to be fair with them, too. I don't want to blame them for a lot of things we did because they didn't know a lot of things we were doing on a local level.

Q You were their Field Representative, weren't you?

A I was supposed to have been, yes. But still I done a lot of things they didn't know I was doing, and a lot of the branches, too.

Q When were you suspended?

A Well, I really wasn't suspended. As I say, I took a leave of absence.

[4809] Q When did you take a leave of absence?

A I ran for Congress—it's funny. You wouldn't believe this. But I got hot twice, and each time I ran—I ran for Congress and I took off in '68, wasn't it, that I ran for Congress when Governor John Bell Williams run? I think it was '68. I took off. I was in hot water then, so I just took a leave of absence.

Q You ran for Congress to get out from under the hot water?

A Not really. I was in trouble with them, and it just so happened that then when I got ready to run for Mayor I was in trouble then about this Port Gibson thing. It just so happened I ran for Mayor in '69. Now, I think I left the office either in February or March in '69. I think that's what the record will show. And I never did go back any more.

Q Are you still a member?
A Oh, yes. I'm a life member.

* * * *

[4817] Q Do you know a man by the name of Lonzo McClorin?

A I maybe would know him if I would see him. I don't know him by name. I would probably know him if I would see him.

Q See if this will refresh your memory in any sort of way, Exhibit C-23, which is introduced in evidence as the Minute Book of the Deacons, and you've seen it earlier during the day.

[4818] A Right.

Q On Page 10 there appears this notation: "Mr. Lonzo McClorin attend the meeting. He gave us some high points how to act as a guard." Does that refresh your memory in any sort of way about the man?

A No, it doesn't. Which meeting is that?

Q July the 11th, 1966.

A Was that a regular mass meeting?

Q No. A meeting of the Deacons.

A No. I don't know anything about them. I told you earlier I don't know a thing about that.

* * * *

[4823] Q You notice on the lefthand side of the first page of that exhibit, which is Exhibit C-6, there are a list of the stores that the blacks were not supposed to trade in.

A Right.

Q And on the right side there were a list of those in the lower right corner of people of the black community who had violated the boycott.

A Yes. I see it.

[4824] Q That was another way of getting at them to let them know if they violated the boycott they were going to be punished, wasn't it?

A Well, not to be punished. They were going to be talked about, ridiculed, not physically punished, but they were going to be talked about and made ashamed, we hoped.

Q Isn't that a method of punishing someone?

A Yes. Discipline them. The whole idea was to discipline those who we thought were doing things that were keeping us enslaved and denied and on the welfare, and we just don't want no more welfare. It's been sickening to us over the years.

Q Mr. Evers, do you know a black woman in the Claiborne County community by the name of Suzy Gibson?

A Suzy Gibson? Not that I know of. Maybe I do. Let me say again—I keep repeating—I know most everybody there by their face, but their names I just don't. If I would see her, I probably would recognize her. I just don't know her by name.

Q I believe I asked you earlier in the course of our interrogation about someone coming out of the Ellis Variety Store, and I asked you if you didn't stop that person and advise that person, who apparently had been a customer in there, that that store was under boycott and she was not supposed to trade there. Do you recall my asking you?

A I remember you asking me, yes.

Q And what was your answer to that?

[4825] A My answer to that was that I haven't said to any person—most of my remarks were in meetings, public meetings. I did advise people in public meetings not to go into the stores, but I don't ever recall stopping anybody on the street and saying anything to them personally. I did go into Mr. Ellis' store and I went into Piggly-Wiggly. I went into all of them and observed and see what they were doing, and that's how I knew they didn't have any blacks. At that time we [sic] colored, colored folks working in there in any responsible positions. But I don't remember me ever saying anything to anyone

coming out of Mr. Ellis' or anyone else's store. And we tried to make it clear to those who were there not to bother them, because there were such a few going in that we didn't have to worry about it.

Q You received reports, did you not, that some of the people whose homes were violated—I'm sorry—who had violated the boycott had had their homes shot into?

A I heard that. I didn't see no report. I just heard that.

Q I said you had received reports, not that you had seen a report.

A No. I just heard it in meetings and different people talking that that had been said. I never saw that. The same as I said about here in Jackson where someone said someone cut a woman's hair off. I never saw that. No one else ever saw it. They heard it. For shopping. I don't know.

* * * *

[DIRECT EXAMINATION]

* * * *

[4846] Q Mayor Evers, I think Mr. Shell, in his interrogation of you earlier today, pointed out that many of the things on the two letters, C-1 and C-2, were directed to public officials rather than to merchants. Can you tell the Court how you intended to deal with that situation if they did not comply with what you asked and what you expected them to do?

A Well, see, we made it clear that "We will take care of you election day." That's why I'm surprised they don't show any of the things that we said in that way. The public officials, we told them, "Just wait. We're going to take care of you election day." I think Dan McCay will tell you that. I said, "Dan, you won't be there next time because we are going to make sure that you are gone, Boy, because we're going to get somebody to beat you." We haven't been able to do it yet.

He's a pretty good man, I guess. Even the black folks won't vote against him. But, anyway, we tried, and this is the way we're going to do it.

* * * *

[4850] Q Now, you indicated that you were in trouble with the National Office.

A Yes, sir.

Q Would you explain to the Court how that came about, how it developed?

A Well, they tried to get me to pull off, not to go through the boycott in Natchez. That was the first thing they did. And they said if I did, they were going to fire me. I said, "Well, start firing me." That was the first thing. That was way back in '65. Then when the Port Gibson thing came on, they didn't support me at all. They wouldn't give me any help at all. They didn't give us no bail money. They didn't give us anything. We were put in jail in Natchez just by the truckloads. They didn't send us a dime down there, not a quarter, to get nobody out of jail. Then the same thing happened in Fayette and the same thing in Port Gibson. They never sent us a penny, because they were saying that they were not going to do it, they didn't want it. As the attorney said, they didn't use I guess the power they had to say, "We're going to throw the branch out." But I think at that time had they thrown us out of it, they knew it would hurt them all over the country, [4851] because at that time things were rough in Mississippi. Thank God they ain't that bad now no more. We are very much advanced. And they didn't help us at all and they were saying I was violating the rules of the NAACP by going around them doing it and they were going to suspend me.

Q When these discussions took place, were these by letters or by telephone calls or what?

A I got a letter from Roy. Then I got called over to Birmingham. And the only reason they didn't fire me in Birmingham—well, let's go back a little further. The

first was in New York at the New York State Conference. Mr. Wilkins and Mr. Kern and I believe Mr. Marcelle and all of the tops called me in because I was violating the rules by supporting Senator Robert Kennedy, who was running for Senator in New York. And they were suspending me for that. And then when I got back home and I got up enough steam, I had enough friends across the country in enough branches, and I did this, and I got enough heat going from all the branches across the country that they backed off. Then when I got in trouble in Natchez and they came to Birmingham in '66 and they were really going to fire me then, I carried two busloads of Mississippians over there to Birmingham, and we just stood pat and we told them in no uncertain terms, "If you fire him, take the whole NAACP out of Mississippi." And they didn't do it then. They backed off then. So it's been this kind of confrontations we've had that I'm not in good standing with the National Office at this day. And, Attorney, I'm not trying to be smart. You've got to understand. They just don't understand what it takes [4852] and how blacks and whites in this state have had to get along. And I make no bones about it, you being who you are, we have gained much through this kind of nonviolent confrontation. I think anybody will tell you that. That's what it was about. And they don't approve of me right now. If you will notice, they never invite me to speak anywhere, they never let me be on the program, any NAACP any place, other than Mississippi. And the National Convention, I'm never invited to even come.

Q You did go to the last one, didn't you?

A I just go anyway, as I did last time.

* * * *

[4859] Q On two occasions when you took your leave of absence, I believe you said one of the occasions you were having a problem about Natchez.

A Right.

Q And you were called on the carpet about it.

A Right.

Q And on another occasion you got in all that trouble because you openly supported Robert Kennedy.

A Right.

Q Was this when Kennedy was up for nomination for President?

A No. That was before. That was when he run for the Senate in New York state.

Q Senator from New York state.

A Right.

Q You were up there actually actively campaigning in his behalf.

A Right. And that's against the policy. We're [4860] not supposed to do that.

Q But you were not discharged on either of these occasions, were you?

A No. Like I said before, we put a little internal pressure on them and they sort of backed off.

Q They wanted to put internal pressure on you, and then you put internal pressure on them by taking two busloads over to Birmingham and saying, "Now see here, you fire me and see what will happen."

A Right. Sure did.

Q And they didn't fire you, did they?

A No, they didn't.

Q They kept you right on the payroll, didn't they?

A Yes. But I think I stepped down a few days later, so it didn't matter, anyway.

Q That was voluntary on your part, wasn't it?

A Yes.

Q It wasn't coercion on their part.

A No. They didn't fire me.

* * * *

[Witness Rudy Shields]

[CROSS-EXAMINATION]

* * * *

[4996] Q Now, does this refresh your memory that there was an organization called the Deacons?

A I still say there was no Deacons. I can explain that. We were catching a lots of hell from the white racists, and we tried to organize the Deacons, but the Deacons didn't want to organize in Port Gibson. So we used the word Deacons to frighten off the Klan.

Q To fight off the Klan?

A No. To frighten them off.

Q Pardon?

A To frighten them off.

Q To frighten them off?

A Yeah.

Q Did you know there was an organization of the Klan in Claiborne County?

A I didn't know for a fact, but there was some racist rednecks who was attacking us, calling us, making threats.

Q So you organized a group which called itself the Deacons.

A I organized a group who was the Black Hats. But we did use the word "Deacons" to make the Klan think we had the Deacons there.

Q Well, the Black Hats also served in the capacity as store watchers, didn't they?

A No. Some of the members might have participated, [4997] but Black Hats were organized for guards, to guard my home and—

Q To guard your home?

A Yes. And all the people who were being threatened, to guard them at night.

* * * *

Q Now, you were present when this organization was put together, weren't you?

A I organized it.

Q You were the one who organized it.

A Yeah.

[4998] Q Didn't they meet in the Masonic Building there in Port Gibson?

A Yes.

Q And what significance did the word "Black Hats" have?

A It didn't have any significance. At that time other black groups was organizing in the North, and the purpose of the other groups was to protect the black folks, and I felt something black would let those who were planning on attacking us know that we had no intention of standing idly by and watching black folks being attacked.

Q So this was purely a protective organization, as I understand it.

A Yes.

Q No purpose in connection with the boycott.

A No. Most of the people who were members, most of them worked during the day, and those who were on the street during the week were usually teenagers, along with myself.

Q Wouldn't someone be on the streets watching the stores to warn the people not to patronize the stores because they were under boycott?

A I usually handled these, along with some teenagers.

Q You were the one who was in charge of the watchers to keep people out of the stores or to warn them to stay out.

A Not to warn them. To solicit their support in the boycott.

* * * *

[Witness Albert Weathers]

[CROSS-EXAMINATION]

• • • •

[5136] Q Do you know a man named Emerson Davis?

A Emerson?

Q Yes, Emerson Davis.

A I know him.

Q Had you heard or did you know that he had been threatened a number of times because he refused to obey the boycott put on by the NAACP?

A Yes, sir, I heard it.

Q Had you heard that his windshield had been broken out because he refused to obey it?

A I did not hear it.

Q Did you hear that he had been beaten by a gang of Black Hats who also shot through his windshield?

A I didn't.

Q You did not. Had you heard that he was threatened by a man named Jim Ellis?

A I've heard it.

Q You heard that he was threatened by a man named Jim Ellis.

A I don't even know Jim Ellis.

Q You just heard that he had, but you didn't know any of the parties.

A No.

Q Did you hear that he had been threatened because he would not observe the boycott?

A No, I didn't hear it.

Q You didn't hear the reason why.

A The reason.

• • • •

[Witness Marjorie Brandon]

[CROSS EXAMINATION]

* * * *

[5637] Q What were you told would happen to you if you did go in these white stores and trade?

A Well, in the meetings there were statements saying that you would be dealt with.

Q What did you understand they meant by saying you would be "dealt with"?

A Well, my understanding was that they wanted black people to stand together and then you could get something done.

Q Answer the question. What did you understand they meant by saying you would be "dealt with"?

A Well, it meant that they would take care of you, do something to you, if you were caught going in.

Q You would be punished, wouldn't you?

A That's right.

Q And you understood that, didn't you?

[5638] A That's right.

Q In other words, you could have something happen to you?

A That's right.

Q You wouldn't be blessed upon, would you? And you understood that, didn't you?

A That's right.

Q And as a matter of fact, certain people did get punished who violated the boycott, didn't they?

A Well, for me knowing it personally, I don't know, but there were talk.

Q There was a lot of talk about people being punished who violated the boycott, wasn't there?

A That's right.

Q And you knew that was going on by virtue of the conversations from the whole community, didn't you?

A Well, I thought it was going on, but so far as me knowing, I didn't really know.

Q You thought it enough that you were not going to violate the boycott even if you wanted to, didn't you?

A No, I didn't violate the boycott.

Q I say it had enough fear in it for you that you wouldn't violate it anyway, would you?

A That's right.

Q You knew that something would happen to you that would be unpleasant if you violated it?

A I felt like it would.

Q You had been so warned, hadn't you?

[5639] A That's right.

Q As a matter of fact, names of people were read out in the meetings, weren't they?

A That's true.

Q I am talking about in the NAACP meetings, people who violated the boycott would have their names read out in the open meeting as being violator of the boycott?

A That is true.

Q And these people were considered as being uncooperative and you wouldn't have anything to do with them socially, would you?

A I wouldn't have anything to do with them?

Q You were told not to, weren't you?

A Yes, those statements were made.

Q And you knew that was the purpose of calling out their names, so that they would be put on a bad list in the other people's minds in their community, weren't they?

A That's right.

Q Now, this boycott went on for some time, and there were groups organized as enforcers of the boycott, weren't there?

A Of my personal knowledge, I don't know, but there were rumors that this group was in action.

Q It was generally understood throughout the entire community that there were enforcers known as the Dea-

cons for Defense that were going to see to it that if you did violate the boycott that you would be punished?

A There was rumor, yes.

• • • •

[Witness Thelma Crowder]

[CROSS-EXAMINATION]

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[5771] Q Do you know Phil and James Gilmore?

A No, I don't know them.

Q Have you ever heard of them?

A I have heard of them.

Q You heard that their house was shot into because they violated the boycott, didn't you?

A I heard about it.

Q Were you in sympathy with that, shooting in peoples' houses?

A Sure, I was in sympathy.

Q You would do most anything to enforce the boycott, wouldn't you?

A Would you repeat?

Q You would do most anything to see that the white merchants were boycotted, wouldn't you?

A What do you mean by most anything?

A You just told me you were in favor of shooting in the Gilmore's house because they violated the boycott?

A No, I didn't. I did not.

Q I believe you did.

A No, I didn't.

BY MR. WILSON:

May we approach the Bench, please, because I don't want to be accused of instructing the witness, Your Honor?

[5772] BY THE COURT:

All right.

(PAUSE IN PROCEEDINGS.)

BY MR. GORE: (Continuing)

Q Do you know Johnnie Cox?

A Who?

Q A man named Johnnie Cox?

A No, I do not.

Q Have you ever heard of him being threatened for getting some cleaning out of a white cleaners?

A No, I haven't heard of it.

Q You know Emerson Davis, a commercial fisherman, down there, don't you?

A Yes, I know him.

Q Do you know him pretty well?

A No. I don't know what you mean by "pretty well." I just know him. That's all. I know a little bit about him. I have seen him a few times.

Q And you know he didn't pay attention to the boycott, did he?

A I don't know that.

Q Did you hear that he got beat up by Rudy Shields and some colored people down there?

A No, I don't remember hearing it.

Q How about Laura Cullins, do you know her?

A Yes, I do.

Q You heard that she wouldn't observe the boycott, didn't you?

[5773] A I hope you will speak a little clearer, because I might be misinterpreting what you say.

Q Did you hear that she didn't pay any attention to the boycott?

A I heard it.

Q Did you hear that her house was shot into?

A No, I did not.

Q Did you hear that her son, Muriel Cullins, had a brickbat thrown through the windshield of his car because he wasn't observing the boycott?

A No, I don't remember hearing it.

Q How about Willie Myles, do you remember him?

A No.

Q He lives in Hermanville.

A No, I don't know him.

Q Did you hear anything about him being threatened about the boycott?

A I don't remember.

Q Do you know Preacher White, the big, fat fellow that wore overalls?

A No, I don't know Preacher White.

Q Have you ever heard his name mentioned or anything about him?

A You will have to give me a little time to think, and still I can't remember everything. But, no, I don't remember hearing that name.

Q Did you hear about him getting whipped because he didn't observe the boycott?

[5774] A I don't remember.

Q Do you know Joe Heath and his wife?

A Joe who?

Q Heath. H-e-a-t-h.

A No.

Q How about Jasper Coleman, a colored contractor down there?

A Yes, I know him.

Q Do you know whether he observed the boycott or violated it?

A I don't know.

Q Did you hear about him being threatened about the boycott?

A No, I have not.

Q How about Alfred Sheppherd?

A I don't know him.

Q How about Tommie Rice?

A Yes, I know him.

Q Do you know whether or not he observed the boycott?

A I don't know.

Q Did you hear about his house being smeared with paint?

A No.

Q You didn't hear about his house being smeared with paint about some trouble about the boycott?

A No, I didn't hear it.

Q How about Suzie Gibson, do you know her?

[5775] A Yes, I do.

Q Did she observe the boycott, or do you know?

A I do not know.

Q Do you know Elmo Scott?

A Yes, I do.

Q What does he do?

A I don't know.

Q Did you see him picketing or marching?

A I don't remember.

Q Did you ever see him wearing a black hat around Port Gibson?

A (No response)

Q A big, black straw hat?

A I don't remember.

Q After the boycott started there was a group of young colored men called the Deacons. Is that right?

A (No response)

Q Did you understand my question?

A Repeat it, please.

Q After the boycott started, a group of young black males were standing around on the street corners making sure the boycott was enforced, isn't that right?

A I don't know.

Q You didn't see any of them standing up and down the street in front of the white stores?

A Would you let me relate this to you? I was a housewife, and had a sick husband at the time, and I was first in the hospital and out of the hospital, and when I wasn't [5776] doing that I was at home. I have

never been a person to be hanging on the street. I go up there and attend to my business, and go back home.

Q But you had to pass the white merchants' stores to go trade with the black merchants, didn't you?

A What year was that?

Q 1966, 1967 and 1968.

A I think we had two or three black stores at that time. Yes, I had to pass white stores.

Q You observed the picketing, didn't you, carrying signs up and down the street?

A Yes.

Q Did you observe some young black males standing around with black hats on watching the stores?

A To be fair with you, I have never seen them standing around at the stores, to say, watching them, to my knowledge. I don't remember seeing them.

Q You have heard of the Black Hats, and the Deacons, haven't you?

A I have heard of them, but I don't remember seeing them.

Q And it was general knowledge in the community that they were put there to keep the other black people from going in the white stores, weren't they?

A I couldn't give you the answer to that because I don't know.

Q It was common knowledge, wasn't it, that they may hurt somebody if you tried to go into a white store when [5777] the boycott was on—they would take your packages away from you?

A I don't know. I haven't seen any of that, and I don't know.

Q I'm not asking now about what you saw, but wasn't it general knowledge in your community that that is what they were for?

BY MR. CARTER:

If the Court please, she keeps saying that she doesn't know.

BY THE COURT:

I think she has said it over and over again that she doesn't know. Mr. Gore, you just can't keep on asking the question over and over again.

BY MR. GORE:

Judge, I was asking her wasn't it common knowledge.

BY THE COURT:

All right, if you can answer that question, was it common knowledge or was it not, that there were people on the street watching these stores for the purpose of enforcing the boycott?

A Come to my knowledge, I don't know.

BY THE COURT:

The question was, was it common knowledge? Common knowledge meaning . . .

A Explain it, please.

BY THE COURT:

[5778] All right. A thing that was throughout the community—that people heard throughout the community, everyone was talking about it. Do I make myself clear now?

A Yes, you do.

BY THE COURT:

Did this happen in relation to anyone who was on the streets down there supposedly watching the stores?

A I can only say I did not see it. I heard it, but I did not see it.

BY THE COURT:

Well, you heard it?

A I heard it, but I did not see it.

BY THE COURT:

I am not asking you what you know of your own personal knowledge now. I am asking you if it

wasn't a common thing talked about throughout the community?

A I heard it.

BY THE COURT:

You still haven't answered my question, and I am going to ask it *one more time.*

A Uh umm.

BY THE COURT:

And one more time only. Was this something that was talked about throughout the community?

A Yes, it was talked about. I don't know about common.

[5779] BY THE COURT:

All right.

BY MR. GORE: (Continuing)

Q Do you know Jim Ellis, Jr.?

A Jim Ellis, Jr.?

Q He worked for MAP.

A Yes, I didn't know he was a junior though, but I know Jim Ellis that worked for MAP.

Q What did he do for MAP?

A He was a—I think Jimmy was a teacher.

Q And he was active in the boycott, wasn't he?

A I don't know.

Q Did you ever see him marching or picketing?

A I don't know. So many were in the march that I can't dare say that I remember seeing him in it, and I wouldn't say that he wasn't. I don't know.

Q Did you ever see him in the church at the NAACP meetings?

A Yes, I have seen him in the church.

Q Would he attend regularly?

A I don't know. I have seen him in the church, but I don't know how regular because I didn't attend all of the meetings myself.

Q Well, he was there everytime you were there, wasn't he?

A I don't know.

Q Don't you remember seeing him, or not?

A I couldn't remember who all would be there at the same time I was there.

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[Witness Eli Brooks]

[CROSS-EXAMINATION]

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[5811] Q Who told you about the boycott after you got sick?

[5812] A Well, there was a white lady that lived next door to me. She asked me had I heard it on TV, and I told her, "no." She said, "Well, they throwed a boycott in Port Gibson." And a thousand and two, and that's where we live. I say, "No, ma'am, I hadn't heard it."

Q What was this white lady's name?

A Mrs. Housley.

Q Who?

A Lizzie Housley.

Q Lizzie who?

A Housley, H-o-u-s-l-e-y. Housley.

Q H-o-u-s-l-e-y?

A l-e-y, right.

Q Now after she told you about it did any black people ever tell you about the boycott?

A Well, occasionally along I did get a few words about it. Some would come by and see how I was doing, something like that, and they would mention about it, tell me about it.

Q What did they tell you . . .

A Well, they asked me did I know there was a boycott at the stores, and all of that. So I didn't—all I could do was just tell them I heard, and that's all.

Q What had you heard?

A The stores were boycotted.

Q What stores were boycotted?

A The way they tell me they was all of them.

Q All of the white stores?

[5813] A Most of them.

Q Did they name any particular stores?

A Well, they might have did. I don't know. I know they say all of them were boycotted.

Q Do you know what a boycott is?

A I'm not familiar with them any more than what I read there.

Q What did you hear there a boycott was?

A How is that now?

Q What did you hear a boycott was?

A Well, say for no one to go into the stores, and not to buy anything from them.

Q Not to buy anything from the white merchants?

A Yes.

Q Why didn't they want you to go in the stores and buy anything from the white merchants?

A Well, I don't know, that is just what I heard them say. Don't go in the stores, and don't buy anything from them.

Q What did these people want to accomplish by refusing to buy in the white stores?

A If you're asking for the truth, I'm going to tell you. I wasn't informed into all of that, and I couldn't just tell you all about, you know, what they was trying to accomplish because I wasn't informed or nothing, because I wasn't around to be there. I was ill for maybe two or three years during the time. And I couldn't—all I suggest was little like I told you that I heard, and listen on TV.

[5814] Q So you don't know what the objective of the black people was in putting the boycott on the white merchants, is that right?

A Not to tell the exact truth, I don't.

Q You are going to tell me the exact truth, aren't you?

A I'm going to tell you the exact truth, but I . . .

Q Well, did you join with your fellow black citizens in Claiborne County and boycott any of the white stores?

A I did not. No, sir.

Q You continued to trade with the white merchants?

A Well, I traded sometimes when I got up to where I could get around. Everybody was going in the stores again, and I still went. I went in stores just like I did before because when the doctor turned me loose for work, and I needed something I went back and got it.

Q When did he turn you loose?

A I don't know the exact date—in, I believe it was in 1968.

Q 1968?

A Yes.

Q And you went on back and went in the white stores?

A Well, I went in and get what I want to get at the time. Everybody was going in the stores, and I went in them too.

Q Do you remember about April 4, 1968 when Martin [5815] Luther King was assassinated in Memphis, Tennessee?

A Yes.

Q The situation got pretty tense at that time, did it not?

A Yeah.

Q Did the NAACP put the boycott back on, or intensify the boycott on the white merchants after Martin Luther King was killed?

A I can't recall.

Q You don't know?

A (No response)

Q Did you ever engage in any march in Port Gibson or Pattison?

A Never did.

Q Did you ever see them march?

A Never did.

Q Were you in sympathy with your fellow black citizens in putting the boycott on the white merchants?

A I didn't insist in any of it.

Q Well, I didn't say insist, I—

A I didn't understand. I beg your pardon.

Q Did you agree with it? Did you agree with the black people?

A Yeah, I went along with them because I wasn't in there. I wasn't there at the time.

Q You went along with your fellow black citizens in putting the boycott on the white merchants in Claiborne County?

[5816] A I wasn't with them when they put it on, but after they say it was on I went along with them because I didn't want to get hurt, nor my stuff to get tore up.

Q Why did you think if you didn't go along with them that you would get hurt, and all of your stuff would be torn up?

A Well, you hear all them kind of rumors, well, I mean, like that, you hear those kind of rumors. I don't know whether it would happen or not.

Q What kind of rumors did you hear?

A They would beat you up, or whatnot, like that.

Q Who would beat you up?

A Anybody. I didn't know who. I was at home. I didn't know.

Q Black people would beat you up?

A I didn't know whether it would be black or white. I didn't know.

Q Didn't you make an effort to find out who would beat you up if you traded with the white merchants?

A Say would I find it out?

Q Did you make an effort to find out who would beat you up if you traded with the white merchants?

A Well, no, I didn't make no effort because I never did try.

Q So you were afraid that you would be harmed, and your property destroyed if you did? Is that right?

A Yes.

Q Now who told you that you would be harmed, and [5817] your property destroyed if you traded with the white merchants?

A Well, you would hear them sitting around bench talking.

Q Now where was this bench located that you—about which you heard this talk?

A Well, most everywhere I went after I got up.

Q Now who was doing the talking? Black people?

A Yeah, mostly, and some white, too.

Q Some white told you they would beat you up if you traded with white people?

A Right.

Q I want you to name the white people that told you that?

A Well, some folk lived at home, talking about they would do it, he didn't say what would happen. He say if we go in these stores they going to whup you all, like that. Well, see I didn't [sic] what was going to happen noways because I wasn't even out there.

Q Who were these white people that told you that? Give me the names?

A Charlie Jordan.

Q Charlie Jordan? What is his address?

A And Mrs. Housley. She mentioned the same thing.

Q Wait a minute now. What is his address? What is Charlie Jordan's address?

A Pattison.

Q Just Pattison?

[5818] A Yeah.

Q Does he live right in the city limits of Pattison?

A Yes.

Q All right. Now what is the name of another white person that told you—

A Well, Mrs. Housley. I imagine she was just teasing about it.

Q Who's that?

A Mrs. Housley.

Q Mrs. Howell? Mrs. Housley?

A Yeah.

Q You imagine she was just teasing you?

A I reckon she was. I don't know. I don't take no chance on it.

Q You thought she was just teasing you, but you didn't take any chance?

A No, I didn't.

Q All right. Any other white people told you if you went in there and traded with the white merchants that they would beat you up?

A I don't know.

Q You don't remember any other names?

A No.

Q I want you to tell me the names of every black person that told you that you would be beaten up if you traded with the white merchants of Claiborne County?

A Oh, Eli Sayles.

[5819] Q Eli Sayles?

A Yes.

Q Where does Eli Sayles live?

A He lives in Pattison.

Q All right. Who else?

A Alonzo McCline.

Q Alonzo McCline? M-c-C-l-i-n-e?

A Right.

Q All right. Who else?

A Well, Arthur Camphor.

Q Arthur who?

A Camphor.

Q How do you spell it?

A I don't know how you spell that Camphor.

Q Arthur Campbell?

A Camphor.

Q Arthur Camphor? C-a-m-p-h-o-r?

A Might be, I don't know.

Q All right. Tell me any other names of black people that you can think of who told you that if you traded with the white merchants of Claiborne County that you would be beaten up?

A Those were the ones that came out when I was sick, and was telling me about what was going on.

* * * *

[Witness Mrs. E. J. Jennings]

[CROSS-EXAMINATION]

* * * *

[6006] Q Now when the boycott was put on did you participate in any of the marches?

A Never.

Q Have you ever been in any of the marches?

A No, no.

Q Have you ever seen the marches in downtown Port Gibson?

A No, I haven't.

Q Were you aware that pickets were on the streets in Port Gibson?

A I didn't see any.

Q Did you know there were pickets downtown?

A No, I heard that they had some, but I didn't see them.

Q Who was supposed to have had the pickets?

A I didn't see them, but I heard that some young men were, but I didn't see them so I couldn't tell you who they were.

Q Was it your understanding that these pickets were there in relationship to the boycott?

A That's right.

Q And it was your understanding that the purpose [6007] of the pickets was to call to the attention of everyone that a boycott was in effect, wasn't it?

A Right.

Q But you never did see any of them?

A No.

Q Were you aware of the existence of a group of men, young, middle aged, and perhaps a little older, who were in downtown Port Gibson to enforce the boycott?

A No, not special.

Q Did you ever hear of an organization called The Deacons?

A No.

Q Or the Black Hat Group?

A No.

Q Did you understand there were any store watches in downtown Port Gibson while this boycott was going on?

A Not specially if that was different from the pickets. I didn't hear about it.

Q All you heard about was there was picketing going on downtown?

A Some of them were walking.

Q Did you know who any of the picketers were?

A No, I didn't.

Q Where did you trade during the time you were observing the boycott?

A Drexel White's, mostly. That is right at my home.

Q Drexel White's?

[6008] A Right.

Q Is Drexel White's there in Hermanville? Or is it a country store out between Hermanville and Port Gibson?

A Between.

Q Between Hermanville and Port Gibson?

A Right.

Q You live right on that highway?

A That is right. I live right at the store.

Q Before the boycott, had you traded with the white merchants in Port Gibson and Hermanville?

A Not too much because I use [sic] to run a store myself, and then after I stopped my sister-in-law started, and most of the stuff I needed was right at my—

Q Was the White store your sister-in-law's store?

A Right.

Q Did they have dry goods as well as groceries?

A That's right.

Q And it was the store you had run before, and you gave it up?

A That's right.

Q What's the name of the white store in Hermanville?

A It is called White's Grocery.

Q No, in Hermanville I am talking about. The white merchant there?

A Uh umm.

Q Would it refresh your memory if I asked you if it was Mr. Coen's?

A Mr. Coen's is one.

[6009] Q That's about the only one left down there, isn't it?

A That's the only one because Williams was on the top of the hill, and they have gone out of business.

Q Had you ever been a customer of Mr. Coen's before the boycott?

A No, not unless I was just in Hermanville, and bought something.

Q Is your home closer to Port Gibson than Hermanville?

A Half way.

Q Did you trade more in Port Gibson than you did in Hermanville?

A Right.

Q When you got into the boycott, and you didn't trade in the white stores there in Port Gibson, did you learn of the organization of a new store called Our Mart?

A I did.

Q Did you become a stockholder in Our Mart?

A Did not.

Q Do you now own any stock of Our Mart?

A I do not.

Q Do you trade there?

A Very seldom. But I would if they had anything I wanted.

Q Well, between the time that the boycott went on in 1971, when you understood it was off, did you trade with any white merchants in downtown Port Gibson?

[6010] A You are talking about after we went back buying?

Q No, I am talking about before. I am talking about when the boycott was put on which you testified to be April 1, 1966, until the year 1971, when you said you understood it was lifted. Did you trade with any white merchants in Port Gibson?

A Not until I thought it was off. No, I bought something from the Sherman Furniture Company.

Q From who?

A Sherman Furniture Company beforehand, but after the boycott was put on I mailed their money to them.

Q You wouldn't even go in to pay them?

A No, I didn't go in because I didn't want no trouble.

Q What kind of trouble were you trying to avoid?

A Well, if they ask you to stay you had better stay out.

Q Why had you better stay out? What would happen to you?

A I don't know, because I hadn't been in one before.

Q Well, you had some fear of some sort or you would have gone on in?

A I've heard about boycotts before.

Q What had you heard?

A Well, I hear that sometime they may take it away from you, or do something to you.

Q Take what away from you?

[6011] A Whatever you've got. Whatever you buy.

Q Was that the reason you were afraid to go in the white stores in Port Gibson?

A I didn't want no risk.

Q You felt it would be a risk that you would take if you would go in?

A Might have.

Q How did you arrive at that decision?

A I've heard of boycotts in other cities and things before.

Q What other cities had you heard about?

A Detroit, and different places. You hear.

Q Had you heard about the one in Natchez and Fayette?

A I don't specially remember what I hears about them.

Q Did you have a general fear that if you went into a store some harm of some sort might come to you?

A Might come.

Q Did you have a general understanding that those who didn't violate the boycott did have some things happen to them there in Claiborne County if you didn't?

A Not in particular.

Q Did you hear of any instance where people traded in white stores in violation of the boycott had some unusual thing happen to them?

A I don't think so.

Q Do you know Laura Cullens?

[6012] A I know her.

Q She lives out in the general area where you do, doesn't she?

A Just out of town.

Q On sort of the same highway. Were you not aware that Laura Cullens house was shot into because she wouldn't observe the boycott?

A I might have heard it, but I don't just recall it.

Q Did you hear that she had a number of threatening telephone calls made to her because she wasn't observing the boycott?

A No, I didn't.

Q Did you hear that her son's automobile had the windshield knocked out, and the windows knocked out because he and she were both refusing to observe the boycott?

A I don't recall whether I heard special about them or not.

Q Did you hear about anyone getting any harm brought to them because they didn't observe the boycott?

A Not in particular.

Q Did you hear of anybody in general?

A I don't recall. I just didn't take part too much.

Q You knew the boycott had been put on by the NAACP and the black leadership in Claiborne County didn't you?

A Right.

Q And you knew generally what a boycott was all [6013] about, as I understand your testimony? Am I correct in that?

A Yes.

Q And your information was such that you were afraid that if you didn't observe it something might happen to you, wasn't it?

A Right.

Q Because of that you would not violate the boycott? Is this what you are telling me?

A That's right. I didn't intend to.

Q What did you think would be accomplished by the boycott being kept on?

A I don't know, but some things were accomplished.

Q What things were accomplished?

A Some of the grievances that were on those papers there were accomplished. Some of the streets, and some Negroes were put on—were elected to certain positions that were on there.

Q The election of people to certain positions would be a matter of the voters to accomplish, wouldn't it?

A Yes.

Q Now the white merchants would just simply be voters, wouldn't they? Were you trying to force the white merchants to vote to put black people in these positions by putting the boycott on the white merchants?

A I don't know whether that was the purpose or not.

Q Well, what else was accomplished of these grievances by virtue of the boycott?

A Well, since you said that it was the voting [6014] that was the cause of that then maybe the boycott didn't do that, but I know some of those things have been accomplished.

Q What else has been accomplished?

A They have done certain jobs to the streets, and more people are hired to positions.

Q What type positions?

A In the stores.

Q What stores?

A And on the county board. And on

Q Wait a moment—

A I meant to say the Board of Education.

Q The Board of Education would be controlled by either the voters or the county officials, wouldn't it?

A It would, I guess.

Q Do you know?

A It would be by the county folks.

Q And that is not what the merchants have anything to do with other than be a friend of anybody else around town would have, do they?

A I thought you were asking me if I had seen any of those things on there that had been accomplished since—

Q I was.

A —and I was telling you that I have.

Q All right. I am asking you what the boycott had to do with that?

A It might not have had anything to do with it.

Q I understood you to say that you told us the boycott had accomplished these satisfactory issues?

[6015] A Well, since you said that didn't apply to the boycott then the boycott didn't do it.

Q I am not saying that. I am asking you. I am asking you what you think the boycott accomplished in the

way of satisfaction of these grievances, any one or more of them?

A You are asking me what I thought, and I was telling you what I thought, but if I didn't understand the certain things, then that was my mistake for not understanding it.

Q What you did really was to put a boycott on the white merchants to put a force against them to put them out of business if they didn't go to the town and county officials and get these various things you wanted done. Isn't that true?

A That is why I guess it was put on but not that I put it on.

Q Well, it was your organization that put it on, and you observed it?

A I observed it.

• • • •

[6023] Q That was another fear that you would have of violating the boycott, wasn't it? That your name might be read out in an open meeting of the NAACP? You didn't want that to happen, did you?

A I know it wouldn't if I had been doing something I would have been embarrassed.

Q That's right, you would have been embarrassed about it, wouldn't you?

A Right.

Q And you wouldn't have wanted it to happen because the fellow members of your race would probably not have anything to do with you socially after that, would they?

A I don't know about that.

Q Well, wasn't that one of the purposes of the names being read out?

[6024] A Might have been.

Q Would you have fear that that might have been a consequence of it?

A I don't know that I thought about it like that. But I am sure if they started reading names off somebody

would say something, but I haven't been there when they read nobody's name off.

Q I believe you said it would have embarrassed you if your name would have been read off?

A Sure it would.

• • • •

[6026] Q Now with reference to what you knew about boycotts, and things that could happen to people, did you ever get any information that either Phil Gilmore or James Gilmore [6027] had had their home shot into?

A No.

Q Did you hear anything with reference to Johnnie Cox and his wife being threatened about the boycott being violated by them?

A I don't recall. Were they somebody in Port Gibson?

Q No, Hermanville.

A I don't know them.

Q You didn't know anything about it? You didn't hear anything about it?

A I don't recall it. I might have.

Q Did you hear anything about them having to enlist the aid of Chief of Police Rodney Porter to pay a bill in a white cleaning special shop there in Port Gibson?

A No, I didn't.

Q Do you know Emerson Davis in Port Gibson? The commercial fisherman there?

A No, I don't know him.

Q Did you ever get any information about Emerson Davis being threatened and having his car windshield knocked out, or being beaten by some people on the street because he violated the boycott?

A I don't recall.

Q I believe you said you didn't hear anthing about Laura Cullens or Merle Cullens, her son, having any incidents of violence toward them? Is that correct?

A That's right.

[6028] Q You just didn't hear anything about it?

A I don't remember hearing them say any were broken up.

Q Do you know Willie Myles that lives over in Hermanville?

A I know a Willie Lee Myers. It might be the same person.

Q He works up at LeTourneau?

A The Willie Lee Myers I know, I don't know of him working up there, but it could be the same person.

Q Did you hear anything about threats that were directed to him, or merchandise taken away from him and broken, that he obtained while he was violating the boycott?

A No, I didn't.

Q Did you ever know of a Preacher White, who I understand is now dead, who was a brick mason and cement finisher in Port Gibson?

A I know of him.

Q You heard of the incident where Preacher White was whipped in an alley, didn't you, because he violated the boycott?

A I heard that.

Q About when was that during the course of the boycott? Was that the early part of the boycott, or later on, or do you remember?

A I don't remember.

Q But it was your understanding that he was beaten because he did not observe the boycott, wasn't it?

[6029] A Yes.

Q Did you hear of the incident or get any information with regard to the occasion when Sheriff Dan McCay's milk truck was stopped when they tried to deliver milk to the school?

A I heard about that.

Q You heard about that, didn't you?

A That's right.

Q And this was a matter of a white merchant trying to sell milk to the school, black school, wasn't it?

A That is right.

Q Did you know Mr. Marvin Hynum, his white boy that drove the truck that was stopped?

A I know it was a white fellow driving.

Q Do you know Johnny Shorter, his porter, who actually delivered the milk and handled the mechanics of taking the milk out of the truck and putting it in the school?

A That's right.

Q You understood that he was one of those involved in the truck that got stopped?

A Right.

Q Do you know Will Shaifer that runs the pool hall there in Port Gibson, don't you?

A Yes, sir.

Q You understood that he was placed under the boycott too because he received some merchandise from Piggly-Wiggly, didn't he?

A I don't remember that.

[6030] Q Do you know Joe Heath and his wife?

A No, I don't.

Q Did you hear anything about them being threatened because they were violating the boycott?

A I don't recall anything about a Heath.

Q Do you know Jasper Coleman, the carpenter man in town?

A I know him.

Q Did you hear anything about him getting any threats or violence directed toward him because he was violating the boycott?

A No.

Q Do you know Alfred Sheppard?

A No, I don't.

Q Did you hear anything in connection with Alfred Sheppard being threatened or violence directed toward him because he violated the boycott?

A No.

Q Did you know Tommy Rice during his lifetime there in Port Gibson?

A I did.

Q Did you get information that Tommy Rice's home had been smeared with black paint because he violated the boycott?

A No, because I thought he was dead at that time.

Q I am talking about before his death?

A No.

Q Do you know Susie Gibson?

[6031] A I know one Susie.

Q I am talking about a black woman named Susie Gibson?

A Yes.

Q Did you get any information that Charles Evers stopped her after she left the store, and threatened her because she had been going into a white store during the boycott?

A I didn't hear it.

Q Did you know Rudy Shields, who was active in the boycott there in Port Gibson?

A I remember him.

Q What do you remember about Rudy Shields?

A I knew he used to help with the devotion and the singing, etc.

Q Helping with the devotion and the singing.

A That's right.

Q Rudy Shields?

A That's right.

* * * *

[Witness Sara Currie]

[CROSS-EXAMINATION]

* * * *

[6190] Q Have you any information or knowledge of an organization called The Deacons?

A No.

Q Were there enforcers of the boycott on the streets of downtown Port Gibson?

A What do you mean by enforcement?

Q People who were standing around seeing to it that the black people did not trade in the white stores?

A No, I didn't see that.

Q Did you ever see a bunch of young men, or one or more young men standing around on the streets of Port Gibson after the boycott, and wearing black hats?

A Not special.

Q Have you ever heard of The Black Hat group?

A They said it was a group. I didn't know.

Q Who said it?

A Oh, different people.

Q What was your impression or understanding as to the purpose of this group?

[6191] A I don't know. They were just wearing black hats. Some of them. I didn't see many wear black hats. They just wearing them, all I know.

Q But you did see some on the streets in downtown Port Gibson wearing black hats, didn't you?

A Seen them on the streets, and other places, too.

Q You don't know what their purpose was? Is that right?

A No, I don't.

Q Well, did you have any understanding from people with whom you talked associated with the boycott, or at the meetings, the NAACP meetings, as to what would happen to you if you violated the boycott?

A No.

Q You were not informed that some harm might come to you or your property might be damaged if you went into the white stores to trade?

A No.

Q That was not understood in the black community while—

A I don't know about the black community. I am talking about me. It wasn't understood by me.

Q I am talking about you and the black community. You lived in the black community, didn't you?

A That's right.

Q What I am asking you now is what understanding, if any, did you have with reference to what might happen if you did violate the boycott?

[6192] A What reference?

Q What did you understand what might happen to you if you violated the boycott?

A Well, I wasn't going to violate the boycott.

Q That wasn't what I asked you. I ask you what you understood what might happen to you if you violated the boycott?

A Nothing.

Q There would be nothing for you to worry about if you went in and traded in the white stores? Is that what you are saying?

A That's right.

• • • •

[6216] Q You do have a recollection of hearing some information being spread through the community that people were being punished for violating the boycott?

A Oh, that had been said.

Q Who was supposed to have been punished that you heard about?

A Who was supposed to be punished?

Q Yes.

A The ones that violated the boycott.

Q Yes.

A I said the ones that violated the boycott.

Q Who were they?

A I don't know.

Q Would you know their names if I suggested them to you?

A I don't know whether I would or not.

Q What about James Gilmore?

A James Gilmore . . . I don't know James Gilmore.

Q Laura Cullens?

A I know her, but I don't know nothing about that.

Q Johnnie Cox?
A I don't know him.
Q Preacher White?
A I don't know him.
Q Will Shaifer?
A I know him.
Q Did you hear anything about Will being put on the boycott?
[6217] A No.
Q Nobody told you, not even your husband, that Will Shaifer had been boycotted, too?
A No.
Q Do you know Emerson Davis? A commercial fisherman named—
A I know him.
Q Do you know anything about Emerson getting beat up by a group of black people because he violated the boycott?
A I heard he did.
Q Where did you hear that?
A I don't remember where I heard it. Somebody was saying it.
Q And you heard of others that were punished in one way or another because they were buying from the white merchants while the boycott was on, didn't you?
A I heard of Emerson.
Q I'm talking about other than Emerson.
A I said I've heard of other being punished?
Q Yes, because they violated the boycott?
A I know . . . I don't remember about all of them.
Q I'm not asking you about all of them. I am asking if you haven't heard of others besides Emerson Davis who was punished?
A I may have heard of one or two.
Q In fact, it was generally known in the community that you could expect some punishment if you don't observe the boycott, wasn't it?
[6218] A I guess so.

BY MR. SHELL:

We have no further questions.

BY THE COURT:

All right. Gentlemen?

BY MR. SANDERS:

No questions.

BY MR. CARTER:

I have a couple of questions, if the Court, please.

DIRECT EXAMINATION

BY MR. CARTER:

Q Mrs. Currie, do you know the sources of those rumors about people being beaten?

A No, I don't.

Q You don't know whether the source was white or black, do you?

A No, I don't know whether it was white or black.

BY MR. CARTER:

That is all, Your Honor.

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[Witness Charles Davis]

[CROSS-EXAMINATION]

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[6237] Q Let me see if I understand now. You were going along with your leaders in boycotting the white merchants, and now you tell me that you never did pay any attention to the boycott.

A From buying?

Q Yes.

A Well, I told you I bought two cars during the boycott.

Q You've told me that four times. Let's talk about other types of buying from white merchants.

A Talk about which?

Q Talk about buying from other white merchants after the boycott started?

A I didn't have to buy nothing. I didn't need nothing.

Q Did anybody ever talk to you and tell you to quit trading with Mr. Allen?

A No, sir, nobody never told me that.

Q Were you ever threatened?

A Well, I got my glasses shot out of my car, and [6238] a brick throwed up in it. Car set afire.

Q When did that happen?

A That was during the time that the boycott was.

Q Do you know why they did it?

A They said it was boycotted when I went on and bought the car.

Q So somebody—what did they shoot the glass out of your car with?

A Rifle, or something.

Q Was it a 22 or a larger caliber?

A What say?

Q Was it a 22, or larger?

A It was larger.

Q You know something about firearms. You're a security guard I believe, aren't you?

A Yes.

Q Do you know who did it?

A I don't know who did it. I was in the house when it happened.

Q Did you receive any threatening calls or word before the windshield was shot out of your car?

A No.

Q How do you know that is why they did it?

A I just couldn't understand why that they did it. But the boycott was on, and I went on and bought the car, because I need them. I wasn't able to walk at the time too much, and I had to have something to get around in.

Q What year was it that your windshield was shot [6239] out?

A That was in 1968 or 1969. Somewhere along in there.

Q What model car was it?

A A 98 Oldsmobile.

Q What year model?

A 1967.

Q Was it shortly after you bought it that the windshield was shot out?

A Yes, sir.

Q I believe you said a rock was thrown or a brick was thrown through the windshield?

A Yes, sir.

Q Was that on the car or your house?

A The car.

Q Was that at the same time, or different time?

A A different time that they did that.

Q Which one of them occurred first?

A Which one they did first?

Q Shooting it out, or throwing a brick through it?

A A brick was thrown up in it the first time. The next time it was sitting in front of the police station and was set afire, and the next time it was in my yard, and they shot the back glass out of it.

Q What was the length of time between these three incidents that it happened?

A It was a couple of months apart it looked like to me.

[6240] Q A brick was thrown threw [sic] first, then it was set afire, and then the windshield shot out?

A Yeah, yeah.

Q And it was sitting in front of the police station when the brick was thrown?

A When they set it afire.

Q Do you have any idea who set the car afire?

A No, sir.

Q Do you know why they set it afire?

A I don't know why. I guess—

Q Your friends around there told you that they knew why, didn't they?

A Nobody never said nothing about it. It was just set afire. I wasn't in town when it was set afire.

Q What was it doing parked in front of the police station?

A Well, I left to go out of town, and went to Vicksburg to see a sick friend of mine, and left it there in front of the bus station—I mean police station.

Q Were you in town when the rock was thrown through the windshield?

A I was.

Q Where was it parked, and where were you?

A It was parked on the corner there by Danny Lee's Cafe.

Q Where were you?

A I must have been inside somewhere.

Q Was it day or night?

[6241] A It was at night.

Q About what time?

A I couldn't tell exactly what time it was.

Q What time did you discover it?

A After I came out.

Q Well, what time of night was it?

A Oh, it was around about nine or ten o'clock.

Q Where were you—you said it was parked at your house, I believe you said, when they shot at it?

A When they shot at it?

Q Were you inside asleep?

A Inside the house. Me and my wife were sitting there watching TV.

Q Did you hear the shots?

A I heard the shots, but I thought it was a firecracker, and I didn't pay any attention to it. My wife and children were over in the yard playing, and she said that wasn't nothing but a firecracker, and I didn't pay no more attention to it. Then that morning, I came out that morning, and the glass was shot out.

Q Did you find the bullet?

A I found a little piece of lead.

Q And you think it was a high-powered rifle?

A Well, I carried it to the police, and he said it was a rifle.

Q Do you know what caliber?

A He didn't say, and I couldn't tell exactly what it was.

[6242] Q Did you report the brick being thrown through your windshield to the sheriff or to the police?

A I reported it to the police.

Q Who did you report it to?

A Mr. Porter.

Q Chief Porter?

A Chief Porter.

Q What about your car being set afire?

A Well, it was setting in front of the police station when it was set afire.

Q Well, did you determine whether it was deliberately set, or just caught on fire by itself?

A It was set afire.

Q Where did the fire start?

A It started—somebody throwed some gasoline or diesel oil on the wheel, and set it afire.

Q Did it damage it much?

A It damaged the wheel, but the deputy sheriff saw it and he ran up there and put it out before it got to the motor, but it just ruined the tire, burnt the tire.

Q What was that deputy sheriff's name that put the fire out?

A What's that?

Q What was his name, that put the fire out?

A Frank Davis.

Q Is he black or white?

A He is colored.

Q I didn't ask you about Frank. Is he related to you?

[6243] A No, sir.

Q How long has he been a deputy sheriff?

A Oh, I just can't recall how long he has been a deputy sheriff.

Q Was he a deputy when the boycott started?

A I can't recall.

Q Is he still a deputy sheriff down there? You have to speak up. She has to take it down.

A Yes.

Q Did you ever hear anything about the Black Hats or the Deacons down there?

A No, sir.

Q You don't know anything about them? You've never heard talk about them?

A No, sir.

Q Did you hear some talk about what would happen to people if they violated the boycott?

A No.

Q You never did hear any talk in the community about young colored people going to enforce the boycott?

A No, sir.

Q Were you a member of the Deacons or Black Hats?

A What say?

Q Were you ever a member of the Deacons or Black Hats?

A No, sir, I don't remember.

Q You don't remember.

A No, sir.

[6244] Q You'd know it if you were a member wouldn't you? Wouldn't you know it if you were a member of the Deacons?

A If I was a member?

Q Yes.

A You say if I was a member I would know it?

Q Well, I am asking you were you ever a member of the Deacons or Black Hats?

A Oh, no, no, sir, I wasn't no member of nothing, but I joined the NAACP, and I had been there one year, and I never joined no more as I wasn't able.

Q Do you know Elmo Scott, Jr.?

A Yes, sir.

Q How well do you know Elmo?

A Sir?

Q How well do you know Elmo?

A I've been knowing him for a few years.

Q And if he testified that you were a member of the Deacons he is not telling the truth is he?

A He wouldn't be telling the truth as I have never been a member.

Q You don't even know what the Deacons are, is that what you are saying?

A No, sir, I don't.

Q Were you in agreement with the leaders of the black community to boycott all the white merchants?

A Well, yes.

* * * *

[DIRECT EXAMINATION]

* * * *

[6276] Q Do you have an opinion as to whether or not it was likely that the damage done to your car was done by persons in a white community of the white race, or persons of the black community of the black race?

BY MR. SHELL:

We object to this. We object to that question, if the Court, please. He asked an opinion of whether or not it is likely, and my goodness—

BY THE COURT:

I am going to sustain the objection.

BY MR. SANDERS: (Continuing)

Q I will restate the question. Do you have an opinion as to whether it was black people or white people who did the damage to your car?

BY MR. SHELL:

We object to that, if the Court, please.

BY THE COURT:

I am going to sustain the objection. If you can give any concrete reasons here that this man could form an opinion on, I will listen to it, but just to

ask him if he has an opinion who did it, why I don't think it is correct.

BY MR. SANDERS: (Continuing)

Q Have you, subsequent to the damage to your car, inquired in and about the community?

[6277] A I don't know who did it. I just haven't got the least idea who set it afire.

Q You have no idea whatsoever?

A No idea whatever.

Q Were you satisfied with the investigation conducted by the law enforcement officers in Port Gibson surrounding the evidence of damage done to your car?

A Well, I went to the law and he said he didn't know who did it, and I didn't know who did it, and there wasn't nothing he could do about it. For me to find out, if I could speak around and find out who did it, and then probably we could do something about it, but I didn't have the least idea who set it afire.

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[RECROSS EXAMINATION]

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[6279] Q Were you in favor of the methods that the members of your race used to try to get these demands met?

A Say which?

Q Were you in favor of the methods that the members of your race, and the NAACP used to get these demands met?

A Well, yes, sir, I'm in favor of it. I wanted to see it happen, you know. We have our equal rights to go anywhere you want to be going, and if you were capable of being in a job and you were capable of it you've got it.

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[CROSS-EXAMINATION]

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[7153] Q Did you ever see any young men on the streets standing around near the white stores and wearing black clothing or black hats in 1966?

A Not notice them, no.

Q You have never seen any of them around there?

A It's possible; I don't know. I don't remember seeing them.

Q Did you know a young black by the name of James Bailey?

A Yes.

Q Did you hear about his having torn up a flower bed of a black woman by the name of Mrs. Butler because she had ordered and had groceries delivered to her house by a white merchant?

A No.

Q You didn't know about that?

A I didn't know about that.

Q You did hear that there were a number of acts of violence against black people because they were not observing the boycott, didn't you?

A Yes.

Q It was pretty generally talked about in the community, was it not?

A I don't know how general. I heard of a couple, though.

Q Can you tell us where it was that you heard it talked?

A No, I can't do that.

[7154] Q Can you tell us who was present?

A No.

Q Was it in the barbershop of Alexander Collins?

A Well, I wasn't in Alexander's barbershop, so it couldn't have been there.

Q Would you tell us in your best judgment where it was?

A I just don't know.

Q There was a good deal of fear on the part of some blacks because of fear of what some of the other blacks would do to them for violating the boycott, was there not?

A I don't know that.

Q You never heard of that?

A No.

Q If you hadn't heard about the activities of this group of young men known as the Black Deacons, why did you testify a few moments ago that you thought they should be denounced?

A You misunderstood me. I didn't say I hadn't heard about them. There were several incidents that I heard about, the shooting in Gilmore's house and one or two others.

Q What other two did you hear about?

A I can't remember now just what the outcome of it was, but it was a couple.

* * * *

[Witness Bernice Lee]

[CROSS-EXAMINATION]

* * * *

[7254] Q How did you get out from under the boycott?

A My husband went to the meeting that Tuesday night.

Q Did you go also?

A Yes, I did.

[7255] Q Who presided at that meeting?

A At that meeting at that time Reverend Walls.

Q Is that Reverend Eddie Walls?

A That's right. He presided. And my husband was the speaker that evening.

Q Your husband was the speaker?

A That's right.

Q What year was this?

A I think it was '68. I'm not so sure.

Q The boycott had been on a good while before you were caught in the trap of the boycott.

A Yes.

Q Wednesday morning on until the next Tuesday night you just had practically no business.

A That's true.

Q The store watchers were out there watching your building, weren't they?

A I saw some children at times but I didn't pay too much attention to them. But my doors were open because we did have salesmen coming in and did have a few people.

Q But the children you saw you knew were there to watch your store.

A I took for granted they were.

Q Why did you do that?

A Why did I take for granted? Because all the other times they had been coming in. They just stood on the outside.

Q And looked?

A That's right.

Q Were they there from the time you opened until [7256] the time you closed?

A Sometimes.

* * * *

[7297] Q What did you anticipate would happen to you if you didn't agree to quit buying eggs from Bobby Vaughn?

A I just didn't know. But whatever it was, I just didn't want it to happen.

Q You did know that there would be a boycott on you because that had already happened, hadn't it?

A That's true, it was already on me but if I continued to buy eggs I was afraid of what might happen.

[7298] Q What were you afraid might happen?

A I do have cars and I do have a house and I do have a life. I didn't want anything to happen to any of those.

Q You were afraid of something physical happening to you?

A I was; I sure was.

Q What gave you cause to have that fear?

A Because I had heard of some others.

Q You had heard of some others who had been similarly mistreated?

A Yes.

Q Did you understand that mistreatment came because of their violating the boycott?

A That's what one who had it done to them said but I don't know.

Q Who told you about this, Mrs. Lee?

A Different ones.

Q What persons were subjected to physical violence?

A No one ever told me directly themselves. I didn't know anyone that they did it to.

Q Who did you understand had had it done to them?

A I just didn't know but I wasn't taking any chances.

* * * *

[DIRECT EXAMINATION]

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[7310] Is it customary for people to linger around your store in Port Gibson?

A Sure.

Q Did they linger there before the boycott?

A Yes.

Q Did they linger there after the boycott?

A Yes.

Q Is that always true of adults as well as children?

A Sure. More so of adults than children.

Q At the time you said there were people outside your store requesting others not to buy from you, do you know if there was ever any force used prohibiting them from entering [7311] your store?

A No, because a few did come in and they made it out alright.

* * * *

[Witness Nathaniel W. Martin]

[CROSS-EXAMINATION]

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[8512] Q You knew what the purpose of the NAACP was, didn't you?

A Right, I knew the purpose.

Q And you were in favor of their aims and objectives to help the colored race?

A I was.

Q Are you still in favor of their aims and objectives?

A I am to certain extents, so long as it's operating right.

Q How? Explain that.

A What I mean, if it's no, I say, just a lot of—sometimes they go out with different organizations burning houses, you know, just something like that, or doing something or breaking windshields. I'm not in favor of nothing like that.

Q The NAACP was doing that?

A Just some of the local members that would, you know, get the wrong interpretation and they would do such as [8513] that.

Q Well, name the members that went out and burned houses.

A I don't know, but some came up, you know, some houses was burned and they said that's what happened, and they said they was breaking windshields. And I never was in favor of nothing of that sort. I don't know who. I'm unable to know who done that.

Q Who said they were burning houses?

A They never did say.

Q Who was they?

A I mean the rumors that they thought that that's what was happening, some of the bad boys, you understand.

Q You heard some names, didn't you, on the streets?

A I never did hear a single one. I didn't know any of them. At that time I was employed with the Mississippi Employment Security Commission. I was sending the bad boys and girls out for Job Corps, recruiting. That was my job.

Q Well, you heard that Calvin Bailey had been out doing some acts of violence, didn't you?

A I haven't heard that.

Q Did you hear about James Whitney?

A I never have. I didn't have time. I didn't hear of any of them.

Q How about James Bailey? Did you hear anything about him?

A I don't know James Bailey.

Q Well, who did you hear were breaking windshields [8514] in cars?

A I didn't know personal names. I just heard, you know, sometimes they would call over the telephone and say, "I'm going to get you tonight." Never would give no name or nothing.

Q Who would do that?

A Sometimes a telephone would ring and say, "I will come get you tonight" or something like that, just some kind of a talk.

Q Were they calling you on your phone?

A They would call, call a lot, that's right.

Q They were threatening you. Is that what you're telling us?

A That's right.

Q Why were they threatening you?

A Because I wasn't participating with them.

Q You weren't participating with what?

A In the group.

Q What was the group doing?

A If you would go in the wrong stores they call the boycotted stores and, if they caught you in there, they would threaten you some type of way.

Q Are you telling us that you did not observe the boycott?

A Beg your pardon?

Q Are you telling us that you didn't participate in the boycott?

A No, I didn't.

Q Well, what white merchants were you trading with [8515] before the boycott started?

A I had a grocery store and I traded with all of them, a grocery store and service station. I bought from all of them, just whatever I needed.

Q You don't mean you operated a grocery store.

A I did at that time.

Q What was the name of that business?

A Martin's Grocery.

Q Where was it located?

A Behind Jitney Jungle on Rodney Road.

Q Combination grocery store and filling station?

A Right.

Q When did you commence operation of that business?

A Two years ago.

Q In 1971?

A Right.

Q Are you in that business now?

A I'm not.

Q Did you go out of business?

A I did.

Q Why did you go out of business?

A A lot of creditors ran me out and closed out about $7,000 in debt.

Q You gave too much credit?

A Right.

Q Did the black people down there boycott your place of business?

A At one time, they did.

Q When was that?

[8516] A They was talking about it, but they never did just boycott it.

Q They were talking about it. Who are you talking about?

A Well, I heard a rumor that they would boycott the business if—they just said if I didn't do what they wanted me to do.

Q What did they want you to do?

A I don't know.

Q Well, didn't they tell you?

A They didn't.

Q Did they come to you personally?

A They didn't come to me personally. I just heard rumors talking, you know.

Q Who did you hear it from?

A I'm unable to answer that.

Q Well, how about studying on it a little bit. Certainly you remember something that important, as to who sent you a message or who was behind the boycott to your place.

A Well, they thought that I wasn't in favor of it, and so that's why I was just—something like that.

Q Who is "they" now? Certainly you know that.

A Well, other members of the NAACP.

Q Don't you know their names?

A No, sir.

Q Well, who told you that they were talking about putting the boycott on your store?

A Well, I don't know. I just heard it through [8517] the air, operating the store, just some child in there said, "We're going to get you."

Q Through the air?

A Just when they come in. And I also operate a washateria and that's why. And in the washateria was a double compartment, you know, Negroes and whites.

Q Where was that washateria?

A Right behind Jitney Jungle.

Q Connected with your place of business?

A Connected to the place. I was operating it for C. A. Carter in Port Gibson.

Q He owned it and you were operating it?

A He owned it and I was operating it, cleaning it and operating it and keeping the machines.

Q How long did you run that for Mr. Carter?

A About the same time I had the service station, about three years.

Q Some of your customers would come in and say they were talking about a boycott?

A Some of the customers, that's right.

Q Did they prevent your having separate compartments for blacks and whites?

A They didn't. They didn't exactly.

Q How do you know they didn't?

A I mean they would go in there where they was.

Q What?

A They would go in and wash along with them.

Q Well, I mean the NAACP members who threatened to boycott you, did they resent you having separate facilities [8518] for blacks and whites in the washateria?

A They didn't.

Q You never did get that information?

A I never did get that information.

Q How many of these phone calls did you get saying they were going to get you?

A I got several.

Q Did you recognize any of their voices?

A I couldn't.

Q You could tell whether they were colored or white voices, couldn't you?

A I couldn't tell.

Q Couldn't you tell whether it was a black man or a white man calling you?

A I don't think it would be a white man calling.

Q In your best judgment, it was some member of the colored race calling.

A Right.

Q Where were you when you got these telephone calls?

A Sometimes at the station and sometime at home.

Q Would you be at home or would it be late at night or what time of night was it?

A After I closed.

Q What time did you close?

A 10:00.

Q And you got several threatening phor calls.

A Several threatening calls.

Q Did your wife ever get any threatening phone [8519] calls?

A No, sir.

Q When you'd get these calls about threatening to get you or boycott you, were you afraid?

A I was.

Q Afraid physically, about some physical violence?

A Right.

* * * *

[8541] Q Well, what other reasons were they threatening you?

A Well, I guess they thought I wasn't participating with the meeting. I guess that was it.

[8542] Q What meetings?

A The different meetings that they would have.

Q They were also mad at you because you kept trading with the white merchants, too, weren't they?

A I guess so.

Q Well, isn't that your best judgment?

A I guess so.

Q Was there any black person down there that sole [sic] American Oil products?

A Never. I don't know.

Q So the only place you could get them was from Mr. Russell. Isn't that right?

A Well, I had got his tanks and he was the dealer.

Q What other reasons did these people tell you that they were going to get you?

A I don't know. I guess that was the only reason.

Q You didn't take it as a joke. You thought they were serious, didn't you?

A That's right.

Q Wasn't it generally that most of the black people who didn't observe the boycott down there were afraid something would happen to them?

A Those that did not observe it?

Q Yes.

A I guess so.

Q Sort of a reign of terror down there, wasn't it?

A Right.

Q And you heard of a lot of acts of violence, such [8543] as windshields being broken and tires being punctured.

A I heard. I don't know who participated in it.

Q And you heard about houses being shot into.

A I heard that, but I don't know that to be true.

Q Do you know the Gilmores?

A I know the Gilmores. I've sold them an automobile.

Q They are James and Phil, aren't they?

A I know both of them.

Q What's James' wife's name?

A I'm unable to answer that.

Q You don't know. What about Phil?

A I don't know about that.

Q When did you hear their house was shot into?

A Seemingly, it was when it was done. I don't know when.

Q Do you know who did it?

A I don't.

Q Talking about the grocery store before I leave that, did you ever buy any eggs from Vaughan Milling Company? You know Mr. Bobby Vaughan, don't you?

A I know Mr. Bobby. I worked for him.

Q And he was in the wholesale egg business, wasn't he?

A He was. I didn't buy any eggs from him. I bought them in Vicksburg from Merchants Company.

Q What about Sheriff Dan McCay? Did you ever buy any Borden's milk products from him when he had the distributorship down there?

[8544] A No. I worked some for him.

Q Huh?

A I worked some for him.

Q Did you ever buy any products for your grocery store from him to resell?

A The truck wasn't coming. I bought from the other company from Vicksburg.

Q Wasn't he out of the Borden Milk business in 1969 when you started?

A I didn't buy the Borden products. I just had one brand of milk.

Q But you heard he went out of business because the NAACP was boycotting him.

A I heard that, but I don't know why.

Q And Mr. Hynum took over the Borden distributorship. Do you know Mr. Hynum?

A I know Mr. Hynum.

Q You say you worked for Sheriff McCay. When did you work for him?

A Just a time or two. He got me to bring a fellow that went insane during the boycott, and I brought him over here. He was busy and he asked me to run over here and bring him to Whitfield.

Q Sort of a special deputy.

A Something like that. Just a special occasion.

Q The fellow did go insane as a result of the boycott.

A No. He was an old, feeble man.

Q That just got senile.

[8545] A Right.

Q Is that the only time you've ever done any work for Sheriff McCay?

A That's the only time I have just really done anything.

Q Do you know Johnny Cox?

A I don't.

Q Have you ever heard anything about his house being shot into?

A I never have.

Q You know Emerson Davis, a commercial fisherman down there, don't you?

A I know Emerson Davis.

Q I believe everybody knows him.

A I know him.

Q Didn't you know he had a lot of trouble about not participating in the boycott?

A I don't know.

Q Didn't you hear Rudy Shields and some other blacks beat him up?

A I didn't hear that. I didn't hear of anybody beating him up.

Q What did you hear about Emerson Davis?

A I just heard that he was trading with the white merchants. That was all.

Q Did you hear what they did to him or were threatening to do to him?

A I didn't.

Q You know Laura Cullins, don't you?

[8546] A I know Laura Cullins.

Q You heard about her house being shot into, didn't you?

A I didn't hear it had been shot into.

Q Well, what did you hear about Laura. She didn't observe the boycott either, did she?

A I just heard she didn't observe the boycott.

Q Did you hear about anything that was done to her or her property?

A I didn't.

Q How about her son Murriel?

A I know Murriel. I didn't hear anything about him.

Q You didn't hear about his windshield being broken?
A I sure didn't.
Q How about Presley Praham? Do you know him?
A I don't know Presley.
Q Never heard that name?
A Never heard that name.
Q I think I asked you about Willie Myles' house being burned. Did you hear anything else about Willie Myles?
A I sure didn't.
Q Do you know he lives out at Hermanville?
A I don't know him personally. I've heard of him.
Q Did you hear anything about whether or not Willie Myles observed the boycott?
A I never heard anything about it.
Q Did you hear whether or not Murriel Cullins [8547] observed the boycott?
A I don't.
Q How about Preacher White, an old man? I believe he's dead now. He was a brickmason and carpenter.
A I don't know.
Q Do you know him?
A I know him. I think he died some time ago.
Q And you heard that he got whipped in an alley about buying whiskey from a white man, didn't you?
A I didn't hear that.
Q You didn't hear that?
A I didn't.
Q How old was Preacher when he died?
A Way up in years. I imagine he was about 70 some years old.
Q Do you know Wes Butler?
A I sure do.
Q You've heard that he didn't observe the boycott, didn't you? Didn't you hear that?
A I heard that.
Q Did you hear that he got stopped by some blacks down there when he went in to pay a bill at the Auto-Lec store?
A I didn't hear that.

Q You haven't heard anything about any threats against Wes Butler?

A I didn't. I know he bought a new truck during that time, and that was about all.

Q He bought a new truck?

[8548] A A new truck from the Ford place there.

Q Is that Donald Segrest Ford place?

A Donald Segrest.

Q During the boycott?

A Right.

Q About what year? Do you recall?

A Seems like about '70 or '69 or '70.

Q Did you hear anything about a milk truck belonging to Sheriff McCay being stopped out at Addison High School?

A I didn't. I was out at that time.

Q Do you know Alfred Lee Davis? They call him "Fats", I believe.

A Oh, I know Alfred Lee Davis.

Q Is he heavier than this gentleman here?

A About that size.

BY MR. PYLES:

Let the record show that he is pointing to Dan Shell.

BY MR. SHELL:

No, he isn't either.

Q You never heard anything about the Borden truck being stopped at Addison High School?

A I never heard that.

Q Do you know whether or not Sheriff McCay was boycotted by the NAACP and the black people down there, as far as his private business?

A I don't know that he was.

* * * *

[DIRECT EXAMINATION]

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[8586] Q I see. Now, Mr. Gore asked you about a number of incidents or rumors about shooting into houses, concerning the Gilmores and Willie Myles and a number of names, and you indicated that you had heard of some of them.

A Unh-hunh.

Q Do you know whether or not anyone was ever arrested because of any of these things?

A I sure don't.

Q Now, do you recall having heard any rumors of anyone being arrested for any kind of violence in Port Gibson?

A I don't know who it was.

Q You have heard of it, though.

A I haven't heard of anyone just being put in [8587] jail and serving no time or nothing.

Q And you indicated in response to his question that then there was a reign of terror in Port Gibson. What do you base this reign of terror on?

A Of terror?

Q Right.

A I don't quite understand.

Q He said, "Then there was a reign of terror in Port Gibson at this time", and you said, "Yes." I want you to explain to me what you thought about the situation that would indicate to you that there was a reign of terror in Port Gibson.

A I thought that he was talking about they had put on the boycott and marching or something like that. That's what I thought he was talking about.

Q You consider marching a reign of terror?

A I don't know.

Q You don't know? Do you think picketing is a terroristic act?

A Say do I think it is?

Q Yeah.

A I just wouldn't picket. I don't know. I know I wouldn't.

Q You wouldn't?
A No.
Q Do you think it's an act of terror?
A I believe it is.

* * * *

[Witness Joseph Mack "Buster" Barber]

[CROSS-EXAMINATION]

* * * *

[8658] Q Do you know what the Black Deacons is?
A No.
Q Did you ever see a group of young men dressed in black, black hats and black clothing, around on the streets of Port Gibson during the period when the boycott [8659] was on?
A No.
Q You never heard of the Black Deacons?
A I heard of it.
Q Were they the young men who were designated by the NAACP to enforce the boycott, notify the black people not to trade with the white merchants?
A I don't know.
Q You had heard that, though, had you not?
A No.
Q What did you hear about the Black Deacons? You say you heard about them.
A You say what had I heard?
Q Yes.
A I just heard the Black Hats and that's all.
Q You heard there were some Black Hats?
A That's all.
Q What did you hear was the function or purpose of the Black Hats?
A They never did discuss it.
Q Well, what did you hear about the Black Hats?
A I just heard it was a group of boys called Black Hats and that's all.

Q What were their duties and what were they supposed to do?

A I don't know, because they wasn't talking to me.

Q Who wasn't talking to you?

A The fellows was standing on the street discussing [8660] it.

Q You just overheard it.

A Overheard it. That's all.

Q You didn't ask any questions.

A Didn't ask any questions.

Q Do you recall who it was you overheard on the street?

A No, I don't.

Q Do you recall the date you overheard it?

A No.

Q The year?

A No.

Q Do you recall where it was that you overheard this?

A No, I don't remember just where it was.

Q Was it in the vicinity of the Allen Motor Company?

A No.

Q You do know Rudolph Shields, do you not?

A Who?

Q Rudolph Shields.

A Yes.

Q Where did you get acquainted with Rudolph Shields?

A I never got acquainted with him.

Q Did you ever meet him?

A No.

Q Did you ever talk to him?

A No.

* * * *

[8681] Q But in any event, during that period after the boycott went on, you were fearful for your safety and for your wife's safety and for your property, were you not?

A Well, mostly for my wife.

Q You were fearful about that, were you not?
A Not really myself.
Q But for your wife you were fearful.
A Right.
Q And you didn't want anything to happen to you because it would upset your wife if that would happen, wouldn't it?
A Right.
[8682] Q I'm going to ask you if you recall on a Saturday, April the 9th, 1966, out in front of the Piggly-Wiggly store, Mr. James Hudson's, a black man by the name of Ernest Darden tried to go into that store and you, Calvin Williams and about 50 other black people stopped him and told him there was a boycott going on and he was not to go in the store.
A Read that once more, please.
Q I want to ask you if you do not recall that on Saturday, April the 9th, 1966 that a black man and his family, and that black man's name was Ernest Darden, drove up to the front of the Piggly-Wiggly store of Mr. James Hudson, and that you, Calvin Williams and——
A Wait. You said me?
Q Yeah. Calvin Williams and about 50 other black people came from across the street and stopped him and told him that he could not go into a white store because the boycott was on.
A No.
Q You deny that?
A I didn't do it.
Q Did you see it done?
A I didn't see it done.
Q And you deny that you were in that group that stopped him.
A I wasn't in it. I didn't see it. And the first of my hearing about it.
Q Do you know Ernest Darden?
A Yes.
[8683] Q Do you know Ernest Darden?
A I do.

Q Did you know him on April the 9th, 1966?
A I didn't see him, as I can recall.
Q Do you know Mr. James Hudson when you see him?
A I know him.
Q Have you known him a good long while?
A Sold him a car not too long ago.
Q Does he know you?
A He know me personal.
Q And he knew you on April the 9th, 1966? He knew you back in April of 1966?
A Yes.
Q And you had done business with him and knew him and he recognized you back there?
A He hasn't recognized me, not on no 9th day, or no other day stopping anybody from going in the store.
Q What I'm trying to find out, Mr. Barber, is that you knew him back in April of 1966 and he knew you.
A Right.
Q And you know Sheriff Dan McCay, don't you?
A Right.
Q And you knew Chief Porter, didn't you?
A Right.
Q And they knew you, did they not?
A Right.
Q If Mr. Hudson and Sheriff McCay testified that they were there and saw this incident on April the [8684] 9th, 1966 in front of the Piggly-Wiggly and that you and Calvin Williams, along with 50 other black people, stopped Ernest Darden and his wife from going into the Piggly-Wiggly store, is it your testimony that they didn't testify to the truth?
A I solemnly swear they didn't testify the truth.
Q Did you ever stop anybody from going in any white store?
A Never stopped anybody.
Q Did you ever ask anybody not to go in any white stores?
A Never asked anybody not to go in anybody's store.

Q Did you, in April of 1966, register to vote in Claiborne County?

A I don't recall the day, but somewhere back there I did register.

Q Was that when the Federal Registrars came into the county, or did you register before that?

A I registered before.

Q Do you know where it was that you registered? Did you go to the courthouse and register?

A To the courthouse and registered.

Q Did Mrs. Easley register you?

A Right.

Q You didn't have any difficulty in registering, did you?

A No difficulty.

Q And you have voted since that time.

[8685] A Right.

Q And you had no difficulty.

A No difficulty. May I ask you one more question, please, or can I?

Q Well, you're not supposed to ask me a question. But if the Court will permit it—

BY THE COURT:

Go ahead. Ask your question.

A All right. On what day you say? On the 9th day? And you say who said?

Q If I asked you this question, that on Saturday, April the 9th, 1966, if Mr. James Hudson, Sheriff McCay testified that you, Calvin Williams and about 50 other black people came from across the street to where Ernest Darden was parked, started into the store, and that you stopped him and told him that he couldn't go into the store because there was a boycott on, and that the Sheriff came up and told him that he could go in the store if he wanted to, and he said he wanted to go in there to pay a bill, and that you or someone else said, "The Sheriff

won't be with you all the time", do you deny that that happened?

A It's not true.

Q You don't deny that somebody did stop Ernest Darden.

A I haven't seen anybody, no group that tried to stop anybody from going in Piggly-Wiggly or any other store.

Q Do you deny that you were in that group?

A I was not in the group and the people that you called, I haven't seen anybody trying to stop anybody [8686] from going into Piggly-Wiggly or any other store. And you said Mr. Ronnie Porter was one of them?

Q Chief Porter. Do you know him?

A I know him quite well.

Q And you say all of those people, if they came here and testified under oath that they saw you and recognized you as one of those people, that's not so?

A It's not so. I wish all of them was here right now.

Q Why do you wish that?

A So that they could—I would like for them to look in my face, with a clear conscience, and say that Joseph Barber stopped somebody from going in James Hudson's store.

Q Are you known as "Buster" Barber?

A Right.

Q Joseph "Buster" Barber.

A And I don't believe that they could stand on that floor and look me in the eye and tell me that I stopped someone from trying to go in his store. I just don't believe they could do it.

Q Well, if they got on that stand right where you're sitting now and testified to that under oath, is it your testimony that they were mistaken?

A They were mistaken.

* * * *

[8713] Q Didn't you tell me that you were in fear that if you didn't observe the boycott something might happen to you? Didn't you tell me that this morning?

A I told you that.

Q Well, what were you fearful of?

A Well, I guess I just had to watch as well as pray, because I had a sick wife and I didn't want anybody terminating around the house or doing anything.

Q You never had had that fear before April the 1st, 1966 about somebody terminating around the house, had [8714] you?

A No.

Q You never had had that fear before that, had you?

A No.

Q But you did have it after the boycott started on April the 1st, 1966.

A Not really.

Q I'm trying to understand what your testimony is, Mr. Barber. Either you did have it or you didn't have it. Did you have that fear after April the 1st, 1966 when the boycott started?

A I didn't have any fear. I had fear for her.

Q Well then, you had some fear, not for yourself, but for your wife. Is that correct?

A Right.

Q Now, we're going to stick to that, aren't we? That's the truth, isn't it?

A Everything I've told you has been the truth.

Q All right. Now, who did you fear would harm your wife?

A I just didn't know. I didn't have any particular person.

Q Well, why did the boycott being put on change the situation and cause you to have fear?

A Well, I don't know. Any time that a boycott is on, it makes anybody get fear sometimes.

Q It made you have fear for your wife, I believe you said.

[8715] A For her.

Q Not for yourself.

A No. Because I hadn't done anything to be afraid.

Q You were afraid someone would molest your wife. Is that correct?

A That was right.

Q And as a result of that fear for your wife, you and your wife did not trade with any white merchants until February of 1967 when the NAACP took the boycott off of the white merchants.

A I don't know where she bought her groceries.

Q Let's stick to you. Did you trade with anybody, any white merchants in Claiborne County between April 1st, 1966 and February of 1967?

A Well, I just couldn't recall. I could have gone into Lum's Store. I could have gone to Ellis' Store and bought something, but in that length of time I just couldn't recall back that far and say whether I bought something or whether I didn't, because I just don't know from that length of time.

* * * *

[Witness Jimmy Ellis]

[CROSS-EXAMINATION]

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[8939] Q During the time the boycott was actively being carried out in 1966 and 1967 and before you left to go off in 1968, you were aware of a number of reports of incidents of violence directed toward the black people who were violating the boycott, weren't you?

A Yes, I had heard of it.

Q Which ones did you hear about?

A I can't remember any specific one right offhand, but I just heard of some.

Q May I refresh your memory? Did you hear about the home of Phil Gilmore and James Gilmore being shot into?

A Yes, I heard people talking about that.

Q And you know three blacks were arrested for this.

A Yes.

Q And were charged and actually tried for it, [8940] weren't they?

A Yes.

Q Did you attend any of the trial?

A I don't know. I believe I did. I'm not for sure. I think I did. I'm not for sure.

Q These were James Whitney and Calvin Bailey and Elmo Scott.

A That's correct.

Q And the word was that if you violated the boycott you would be punished, a black person, wasn't it?

A Say was that the word?

Q Yes. The rumor that was out.

A Oh, the rumor, yes.

Q That was the fear in the black community among a number of the black people, that if they didn't observe the boycott, harm would come to them, wasn't it?

A Well, in some it was, and some it wasn't.

Q Did you hear of Johnny Cox and his wife being threatened and their house being shot into?

A No, because I don't even know Johnny Cox, I don't believe.

Q Did you hear of an incident when Eddie Lee Wells, George Henry Walker, James Bailey and Calvin Bailey stopped Johnny Cox from going into the cleaners and getting his clothes from the cleaners?

A No, I never heard of that incident.

Q You know Emerson Davis, you said.

A Yes, I know Emerson Davis.

Q You deny that you took his whiskey away from him [8941] and broke it.

A That's correct.

Q You did hear Emerson Davis was not observing the boycott, didn't you?

A That's correct.

Q And you did hear that Emerson Davis had been beaten up on the streets in Port Gibson one time, didn't you?

A Yes, I heard this.

Q Did you hear who beat him up?

A No, I didn't.

Q Did you hear that whiskey was taken away from him and broken that he had bought in a legitimate way?

A No.

Q Did you hear his windshield had been broken out?

A No, I didn't know anything about that.

Q Did you know anything about any of the other incidents we have asked you about?

A No, I didn't.

Q Do you know Laura Cullins?

A Yes, I know Laura Cullins real well.

Q She lives out there on the same road you do, doesn't she?

A That's correct, not far from me.

Q Did you hear that her house was shot into because she was not observing the boycott?

A No, I haven't.

Q Did you hear that she received a number of threatening telephone calls at all hours of the night about [8942] violating the boycott?

A No, I didn't.

Q Did you hear stones and brickbats and other materials were thrown on her house for the same reason?

A No, I didn't hear that.

Q You did not hear that?

A No, I didn't.

Q Do you know her son Murriel?

A Yes, I know him well.

Q Did you hear Murriel Cullins had his windshield of his truck knocked out because he was violating the boycott?

A I heard that he had his windshield knocked out. He told me this himself.

Q What was your understanding as to why it was knocked out?

A Well, that was the same reason that you stated. That's what he said.

Q Said that he had been accused of violating the boycott?

A That's right.

Q Do you know Percy Parham?

A No, I don't.

Q Do you know anything about his house being shot into?

A No, because I don't know him. Don't know where he lives or anything.

Q Do you know a black man named Willie Myles?

A Yes, I know Willie Myles.

Q He lives at Hermanville, doesn't he?

[8943] A Somewhere in that neighborhood, yes.

Q Did you hear about his house being burned?

A No, I didn't.

Q Do you know this colored man in Port Gibson they call "Fats"?

A No, I don't believe so.

Q Alfred Lee Davis.

A I know Alfred Davis, yes.

Q Did you hear anything about Alfred Lee Davis calling Willie Myles a "white man's Nigger"?

A No, I didn't know anything about that.

Q Did you hear that Willie Myles had been threatened and stopped on the road on his way home from work at Le Tourneau's?

A No, I didn't.

Q And threatened because he was violating the boycott?

A No.

Q You know "Preacher" White there in town, this elderly colored man who was a brickmason, don't you?

A Yes, I knew him. I was related to him.

Q How related to him are you?

A He's related on my father's side. He's a cousin. I don't know. He's a cousin.

Q He's a cousin?

A Yes, he was.

Q I believe he passed several months ago, didn't he?

A I don't know. It's been some time ago, yes.

[8944] Q You heard about his being whipped on the streets of Port Gibson.

A Yes. He was telling my father about that.

Q And it was your understanding that his beating came about because he did not observe the boycott, wasn't it?

A That's what he said. I don't know.

Q Did you hear him tell your father that?

A Yes, I did.

Q It was in your presence?

A Yes, it was.

Q Did he accuse you of being one of those who beat him?

A No, he didn't. If he did, he didn't say anything to me about it or to my family about it.

Q Were you accused of beating Emerson Davis?

A No, not that I know of.

Q Well, you'd know about it if they tried to arrest you, wouldn't you?

A That's true.

Q Do you know Wes Butler?

A I believe so. I'm not for sure.

Q Do you know anything of the rumor that Wes Butler was stopped from paying a bill at the Auto-Lec store?

A No, I don't know anything about that.

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[DIRECT EXAMINATION]

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[8954] Q Mr. Ellis, how long after the boycott started did the Deacons form?

A It was quite some time, I believe. I'm not for sure. I'm really not sure on that.

Q Were you one of the original members, or do you know?

A No, I really don't know, because I think when it was first organized it was this club, the Defenders, I believe was mentioned in that document he showed me there.

Q What did they call it?

A The Defenders.

Q I see. And it was a club for what purpose?

A Well, it served sort of as a guard to protect the church and the people marching.

Q I see. Did it develop out of an NAACP meeting, do you know?

A I really don't know. But so far as I can remember, I heard someone say that the church was going to be bombed, they had bomb threats and things of this nature, [8955] that the Ku Klux Klan was going to start riding and killing up the black people there if they didn't stop the meetings in the church and different things.

Q And that's the reason for the Defenders?

A That's right.

Q Now, will you tell me whether or not you saw any overt evidence of white violence towards blacks in Port Gibson during that period?

A Well, you mean physical violence like somebody really beating up somebody?

Q Evidence of surveillance with guns or anything like that.

A Well, I know there were a number of white people riding around with guns in their trucks and they would point them out of the windows and things a lot of times when we would be marching, because this scared me a whole lot of the time, and especially this guy named Jones. He always had a weapon in his vehicle with him.

Q Did you ever see any evidence of weapons while you were picketing?

A Yes. White people had weapons in their cars and things and they would ride up and down through town.

But actually, physically drawing it on someone, I don't remember.

* * * *

[Witness Marcus Jones]

[CROSS-EXAMINATION]

* * * *

[10208] Q What blacks did you hear were not observing the boycott?

A Will Shaifer for one.

Q Who else?

A Emerson Davis.

Q Who else?

A Some dude named White.

Q Was that Preacher White?

A Yes.

[10209] Q Did you and a group of other blacks meet Preacher White in an alley in Port Gibson and whip him?

A No.

Q Did you hear about that?

A Yeah, I heard about it.

Q Where did you hear that?

A On the street somewhere.

Q Some of your friends tell you about it?

A Probably. I don't recall.

Q Which one of your friends helped whip Preacher White?

A I don't know.

Q You knew some of them did, didn't you?

A I didn't know any of my friends did it.

Q Which one of them did you hear was engaged in whipping Preacher White because he refused to observe the boycott?

A None of my friends.

Q What blacks did you hear had whipped Preacher White because he had refused to obey the boycott?

A I didn't hear any names. I just heard he got beat up or something like that.

Q You were in favor of that, were you not, because if he was going to violate the boycott, you thought he ought to be beat up, didn't you?

A I was in favor of something, but not necessarily beating him up.

Q What kind of something were you in favor of happening to Preacher White because of his failure to observe [10210] the boycott?

A For blacks not to associate with him.

Q Did you advocate that he be socially ostracized?

A I am not sure what you mean by ostracize.

Q Did you advocate that other blacks join you in not associating with him?

A That is what I would prefer to happen to him.

* * * *

[10216] Q You and Alfred L. Davis ever stop anybody, any black man, and take his whiskey away from him and break it because he had gotten a white woman to buy the whiskey for him at a white store?

A No.

Q Did you ever stop any black person and take any goods away from that black person and destroy it just because the goods had been purchased at a white store?

A No.

[10217] Q Do you know of anyone who did that?

A No.

Q Had you heard about that happening?

A I have heard about it.

Q Who did you hear that it happened to?

A I don't recall who it was.

Q What black people did you hear that took the goods away from this person whom you now can't recall and destroy it?

A I now can't recall who the individual was, either.

Q You do have a convenient memory, do you not?

A Convenient? What do you mean by that?

Q It is convenient that you can't remember who the victim was or who the perpetrators of the violence were.

A It is not convenient. It is just that I can't remember.

Q You did know at one time, did you not?

A I have heard about it, but I just—

Q But you have just forgotten?

A Yeah, I have heard a lot of things that I have forgotten.

Q That was so unimportant that you didn't even think it worth remembering?

A Not to me, it wasn't.

Q Not to you, it wasn't unimportant?

A It wasn't worth remembering.

Q Oh. You were unconcerned about black people who were the victims of violence by other black people, simply [10218] because they had traded with white merchants?

A I feel they brought it upon themselves.

Q And you thought that was all right?

A Not necessarily—

Q And they ought to be punished?

A Not necessarily all right, but if that is the way it went down, that is the way it went down.

Q So you had no objection to them being—becoming victims of violence by other blacks for violating the boycott, is that right?

A No, I didn't object.

Q You did hear that Alfred L. Davis was one of the enforcers of the boycott, did you not?

A No, I never heard who the enforcers were.

Q Well, you did know that they had some enforcers, people who were punishing blacks for violating the boycott, didn't you?

A I heard something like that, but I never did get any details on it.

Q It was pretty generally known in Claiborne County that there were some black people who would punish other black people for violating the boycott, wasn't it?

A It was generally known, yes.

Q And as a result of that being generally known, there was a good deal of fear on the part of black people to trade with the white merchants, was there not, while the boycott was in full swing?

A I don't know whether they were afraid or not.

Q Weren't you afraid to trade with white merchants?

[10219] A No.

Q You never knew a single black person that was afraid?

A They never mentioned it to me.

* * * *

[10221] Q Do you know where the Deacons held their meetings?

A No, not specifically.

Q Well, generally, where did they hold their meetings?

A Probably at the church, I guess.

[10222] Q Is that what you heard?

A No. It seems to be the logical place, I guess.

Q Were the Deacons armed?

A Yeah, I believe they were armed.

Q What kind of weapons did they have?

A All I know was guns.

Q Hand guns, pistols, or shotguns?

A Shotguns, probably.

Q What kind of weapon did you have?

A None.

Q What kind do you have now?

A None.

Q This church where you think that the Deacons held their meetings, was that the First Baptist Church in Claiborne County?

A It is.

Q Is that the same place the NAACP held its meetings?

A Sometimes.

Q Were the Deacons a part of the NAACP? Was it an [sic] organized under the auspices of the NAACP to your knowledge?

A Not to my knowledge.

Q Who organized the Black Deacons in Claiborne County?

A I don't know who organized them.

* * * *

[10235] Q On Exhibit C-6 on the first page, Volume I, No. 2, dated July 17, 1970, an independent weekly, in the first column on the left, is a story that says, "Support Selective Buying." Do you see that?

A I do.

Q Did you write that headline?

A No.

Q Do you know who wrote this article under "Support Selective Buying"?

A No, I do not.

Q One of the paragraphs says, "For some reason, the black people within the town of Port Gibson have lost faith in the movement and their black leader." What movement is that they are talking about?

A Evidently it must have been the movement to get blacks together and get them registered and get them aware of what was going on and try to get them together so that they could get things better for themselves.

* * * *

[Witness Alex Warner]

[CROSS-EXAMINATION]

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[10681] Q What do you think of those people who went ahead and violated the boycott? You think they might be traitors to the black race?

A Yes, sir.

Q You still feel that way?

A Yes, sir.

Q Did you know that Laura's house had been shot into?

A No, sir, I didn't know it had been shot into. I know that rocks had been throwed, or something like that.

Q And it was because she had violated the boycott, wasn't it?

A I imagine it was.

Q What kind of roof does she have? A tin one?

A Yes, sir.

Q Rocks on a tin roof kind of makes a noise, doesn't it?

A Yes, sir.

Q It would wake up the dead almost, wouldn't it?

A It would make a noise.

* * * *

[10684] Q When the boycott went into effect, Sheriff McCay had the Borden milk route there in Claiborne County. You knew that, didn't you?

A Yes, sir.

Q You heard about the time that Johnny Shorter, who was a black delivery man, and a white man named Hynum, were trying to deliver milk to Addison High School and were prevented by the black students there from bringing the milk in. You heard about that, didn't you?

A Yes, sir, I heard about that.

Q And that was because there was a boycott on the white merchants, wasn't it?

A Yes, sir.

Q Did you hear that they went ahead and perfected delivery anyhow but they almost had a terrible situation down there as a result of this?

A Yes, sir, I heard about some student violence.

Q Quite a bit, wasn't it? Is that what you heard?

A Yes, sir.

Q They pulled the wires loose from his truck, didn't they?

A Yes, sir.

* * * *

[Witness Mack Tisdale]

[CROSS-EXAMINATION]

* * * *

[10850] Q Did you tell me that you had heard there had been some violence of people getting spanked or beat up who wouldn't observe the boycott?

A I've heard that, yes.

Q Who did you hear that something had happened to them?

A I don't know them personally.

Q I mean, whose names did you hear whether you know them personally or not?

A I didn't know their names.

Q Huh?

A I don't know none of their names.

Q Do you know Willie Myles who lives down at Hermanville?

A No, sir.

Q His wife is named Myrtle. You don't know them?

A No, sir.

Q Did you ever hear that his house was burned and he was stopped on the road, and received threatening phone calls because he wouldn't observe the boycott?

A No, sir.

Q Do you know Phil and James Gilmore?

A No, sir.

Q Did you ever hear that their house was shot into because they wouldn't observe the boycott?

A No, sir.

Q Do you know Johnny and Susie Cox?

A No, sir.

[10851] Q Did you ever hear that their house was shot into because they violated the boycott?

A No, sir.

Q Do you know Emerson Davis, a commercial fisherman?

A No, sir.

Q Have you ever heard his name before?

A Sure haven't.

Q Did you ever meet a Rudy Shields? Have you ever heard of Rudy Shields?

A No, sir.

Q Do you know Laura Cullens or Muriel Cullins, her son?

A No, sir.

Q Did you hear that her house was shot into and rocks thrown on the porch?

A No, sir.

Q Do you know anybody named Percy Preham?

A No, sir.

Q Never heard that name before?

A No, sir.

Q Do you know a brickmason down in Claiborne County called Preacher White?

A Yes, sir, I remember him.

Q Was he a preacher?

A Yes, he was a preacher.

Q Do you know him personally?

A Yes, sir, I met him personally. I know him personally, yes, sir.

Q He's dead now, isn't he?

A Yes. He's been dead quite a while.

[10852] Q Did you ever talk to him about the boycott?

A No, sir.

Q What did y'all talk about?

A Talked about nothing. I got him to come over there and build me a chimney once. He ain't never brought up the boycott, him or myself either one.

Q Was that before or after the boycott started when he built the chimney?

A That's before.

Q Did you hear that he got whipped in an alley by some young blacks because he bought some whiskey in a white store there?

A No, sir.

Q You never heard that?

A No, sir.

Q Do you know Wes Butler?

A No, sir.

Q Have you ever heard that name mentioned before with the boycott?

A No, sir.

Q You know, of course, Sheriff McCay, don't you?

A Who?

Q You know Sheriff McCay, don't you?

A Yes, sir.

Q Did you hear that his milk truck was stopped at Addison High School and they wouldn't let him deliver the milk?

A No, sir.

Q You never heard any talk about that?

A No, sir.

[10853] Q How about Will Shaifer? Do you know him, a black man that runs a pool room there?

A I did know of him. I didn't know where the pool room was.

Q You don't shoot pool, do you?

A No, sir.

Q Preachers aren't supposed to do that, are they?

A No, sir.

Q Did you hear that he was put under the boycott for a short time?

A No, sir, never did hear that.

Q Do you know Joe Heath and his wife?

A Yes, I know them.

Q Did you hear that they were threatened because they were trading with white merchants?

A No, sir.

Q Did you ever talk to Joe Heath?

A No, sir.

Q Where have you known him? How well do you know him?

A I know him pretty well.

Q You talk to him, don't you?

A Occasionally.

Q Is he a member of your church?

A No, sir.

Q Never heard him mention, or his wife mention, anything about the boycott?

A I never have.

Q How about Ella Lee Phelps? Do you know her?

A Yes, sir.

[10854] Q How long have you known her?

A Oh, quite a while.

Q Is she a member of your church?

A No, sir.

Q Did you hear that she was afraid to finish her house because she would have to buy from white merchants?

A No, sir.

Q How about Jasper Coleman, a carpenter and a contractor? Do you know him?

A Yes, sir.

Q How well do you know Jasper?

A I just know him when I see him.

Q Did you hear that he was afraid to buy some material from Mr. Vaughan?

A No, sir.

Q Do you know whether or not he observed the boycott?

A Sure don't.

Q Do you know Alfred Sheppherd?

A No, sir.

Q Did you ever hear his name mentioned in connection with violating the boycott?

A No, sir.

Q Did you know Tommy Rice during his lifetime?

A No, sir.

Q Did you hear that somebody threw some black paint on his house because he was violating the boycott?

A No, sir.

Q By the way, what did you think of people down there who didn't participate in the boycott like you did?

A Sir?

[10855] Q What did you think of the people down there who didn't participate in the boycott like you did?

A I didn't have no thoughts about it. They could use their own judgment about it, is all I know.

Q Did you consider them as not being faithful to the black movement down there?

A No, sir, I didn't tell them that. It never was discussed.

Q Do you know some black people who kept trading with the white merchants?

A No, sir, I don't know them. I just saw them come out of the stores.

Q Well, did you recognize them or know who they were?

A No, sir.

Q Do you know a Susie Gibsie [sic]?

A No, sir.

Q Ever heard her name mentioned in connection with violating the boycott?

A No, sir.

Q Do you know a black man named Ernest Darden?

A No, sir.

Q Did you ever hear his name mentioned that he was threatened because he wouldn't observe the boycott—was violating the boycott?

A No, sir.

Q Do you know a colored woman named Mrs. Willie Butler whose nickname was "Nig" who lives in Port Gibson?

A No, sir.

[10856] Q Didn't you hear that her blouse was torn up by some black people because she violated the boycott?

A No, sir.

Q Did you ever trade with Lee's Grocery?

A Yes, sir.

Q Did you trade with them after the boycott started?

A I traded with them occasionally, a little bit, yes, sir.

Q Didn't you hear that the NAACP put a boycott on Lee's Grocery even though they're black, colored?

A No, sir.

Q You never heard that they were under the boycott for a short period of time?

A No, sir.

Q Do you know a man down there named Dee Smith?

A No, sir.

Q Do you know a black man named Roosevelt Wyatt who worked part-time with the sheriff? Call him "Shorty"?

A Oh, I know him—just see him.

Q Did you hear that he was threatened because he was violating the boycott?

A No, sir.

Q Well, what did you hear about the violence? You told me yesterday you heard a lot about it. Who did you hear had been threatened or property destroyed?

A I've heard them speak about two or three different people was threatened; but all them names you called, I haven't heard that.

Q Well, you tell me who you heard had been threatened?

[10857] A I don't know what persons. They said that's what they were doing. But I tell you about me, I

can't keep nobody's name straight but I know that some of the people said they had been threatened.

Q Why were they threatened?

A They threatened to whip some of them; that's what they told me.

Q They threatened to whip them because they kept trading with the white merchants, didn't they? Wasn't that the general knowledge of the community down there, that if you violate the boycott you may get whipped?

A I don't know.

Q Well, you heard it up and down the streets, didn't you?

A Not up and down the street 'cause I don't be up and down the street. People talking, you know, at church and everywhere else, and talk about those things.

Q It was pretty generally known around Pattison that if you violated the boycott you might get whipped. Is that right?

A I don't know of no one around there that got whipped.

Q That's not what I asked you.

A What did you say now?

Q It was common knowledge among the blacks down there around Pattison that if you violated the boycott, you may get whipped.

A Maybe it was.

Q Well, was it or wasn't it?

A I don't know, sir.

[10858] Q Well, you heard it, didn't you?

A I heard it; but knowing it, I don't know.

Q Well, did you hear it in a group of people talking about it?

A Well, just said if you go in the stores—that someone had been told if they go in the stores what they'd do to them. And that's all I heard.

Q You heard that at the church, too, didn't you? At one of your churches?

A I didn't hear that at any one of my churches.

Q Well, you were around the Pattison community when you heard it. Is that what you're telling us?

A That's right.

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[10869] Q You told us when you told Mrs. Bearden that you were going to have to pay up and observe the boycott because you didn't want any trouble, what kind of trouble were you expecting if you kept trading with Mrs. Bearden and Mr. Jordan?

A I heard that they had someone watching the stores; and if I go in there, I didn't want to have no trouble with them. If I'd went in there, they would have contacted me. And I just didn't want to be in it.

Q You were afraid they might do something to your house at night when you were asleep, weren't you?

A Well, I didn't think much about the house. I was thinking about myself.

Q You didn't want them whipping you, did you?

A No, sir.

Q And you were expecting it if you were caught going in the store, weren't you?

A I thought maybe something like that might would have happened.

Q Wasn't that common knowledge among the community, that you may get whipped if you went in a white store?

A I heard that.

Q Huh?

A I heard that, yes, sir.

[10870] Q Well, everybody around you knew that, too, didn't they? Your friends and acquaintances?

A That's right.

Q They knew that?

A That's right.

Q It scared them, too, didn't it?

A I don't know, sir. It might have scared someone.

Q Some of your friends and acquaintances ever tell you, "I'm afraid to go in a white merchant's store"?

A They never did tell me that.

Q Who are you talking about? Some of your friends never did tell you that?

A Some of the people never did tell me that.

Q Did all your friends and members of your church and relatives observe the boycott along with you, didn't they?

A I don't know, sir.

Q Huh?

A I don't know.

Q Well, you said you saw some blacks going in the stores, but you didn't know who they were. So, they're bound to have been——

A Wasn't my family going in the stores. Nobody connected with my family.

* * * *

[10871] Q I'm just about through with you, Reverend. When you told Mrs. Bearden that you couldn't come back because [10872] you didn't want any trouble and that "they" had people watching the stores, who were "they" that you're talking about?

A I don't know. I heard them talking about it. I don't know who they had; who they had personally; or nothing.

Q You heard that the NAACP had people watching the stores, didn't you?

A Must have been—I don't know whether it was the NAACP or who. I heard of it.

Q That was your judgment, that the NAACP had people watching the stores, wasn't it?

A I wouldn't say for sure and I don't know who it was, but that's what they told me—that they were watching the stores.

Q Who told you that they had storewatchers?

A They didn't personally tell me. I just get out and talk and just talking, you know, and I heard that. They

didn't make a special trip to see me to tell me about it. I just heard it.

Q You were just in a conversation with other members of your race and somebody said they got storewatchers?

A Yes, sir.

Q Who did you understand had charge of the storewatchers watching the white merchants?

A I don't know, sir.

Q Wasn't it the NAACP?

A I imagine it was. I don't know.

* * * *

[Witness Roscoe Johnson]

[CROSS-EXAMINATION]

* * * *

[12884] Q You understood that if you didn't observe the boycott, some harm might come to you, didn't you?

A No, sir. Nobody ever told me that.

Q You heard about incidents where harm came to these people who were trading with the white stores in violation, didn't you?

A Well, I said I heard about it.

Q Who did you hear about it from?

A You have to name them for me to tell you. I just can't——

Q I just wanted to ask you. You know James Gilmore, don't you?

A No, sir, I don't know him.

Q You heard about their house getting shot into by Elmo Scott, Calvin Bailey, James Whitney because they were not observing the boycott, didn't you?

A I didn't know what it was about, but I heard that. That somebody shot into their house. I didn't know the names of the people was.

Q You heard those three young men whose names I've mentioned were arrested and tried for it, didn't you?

A I heard they were arrested. I didn't know what they did about it.

Q You understood that it arose out of the boycott, [12885] didn't you?

A Beg your pardon.

Q You heard it came out of the boycott, didn't you?

A I heard that they shot in the house, and they were arrested. I didn't know what become of that. You know, what happened after that.

Q You didn't hear that they were shot at because they were not observing the boycott?

A No.

Q Do you know Johnny Cox?

A I'm not sure. Sometimes I know people, I call them by one name and their real name is something else. I'm not sure.

Q Did you hear that this fellow Cox had his house burned or shot into because he and his wife were not observing the boycott?

A No, sir.

Q Do you know Laura Cullens?

A Yeah, I know her.

Q You heard about Laura Cullens' house getting shot at because she wasn't observing the boycott, didn't you?

A No, sir, I didn't hear that.

Q You heard she got a lot of telephone calls in the middle of the night, and somebody threw bricks on top of her tin roof house because she wasn't observing the boycott, didn't you?

A No, sir.

[12886] Q You know she's got a boy named Murriel, don't you?

A I know she's got some boys, but I don't know their names.

Q Did you understand that one of her sons had their windshields broken out of their car because they were not observing the boycott?

A No, sir.

Q You know Emerson Davis there in Port Gibson, don't you?

A Yes, sir.

Q You understood that Emerson got beat up sometime because he wasn't observing the boycott, didn't you?

A I heard he got beat up. I didn't know nothing about who beat him or anything about it.

Q You didn't know what it was about?

A No, sir.

Q Did you know who beat him?

A No, sir.

Q Did you know that his windshield got broken out in his pickup truck or his car?

A No, sir, I hadn't heard that.

Q You know Willie Lee Myles, don't you?

A Yes, sir.

Q I believe Willie Lee works up at Le Tourneau, doesn't he?

A I don't know, sir, where he works. That's a good ways from me. I don't know. I haven't met him too long ago. Just a couple of years ago.

[12887] Q You understood that Willie Lee Myles' house got burned because he wasn't observing the boycott, didn't you?

A Well, I heard that. I didn't know his house got burned. I just heard it.

Q You heard he got threatened and got stopped on the main road of the highway because he wasn't observing the boycott, didn't you?

A No, sir. I just heard about his house getting burned.

Q Did you know Preacher White there in Port Gibson during his lifetime?

A Yes, sir.

Q You heard about him getting whipped by some young blacks because he wasn't observing the boycott, didn't you?

A I heard that.

Q Do you know Wes Butler?

A Yes, sir.

Q You heard about Wes Butler getting stopped by Eddie Lee Wells and James Bailey and George Henry Walker when he tried to pay a bill at the Auto-Lec Store, didn't you?

A No, sir, I haven't heard that.

Q Did you know Sheriff Dan McCay had the Borden milk route there in Port Gibson at the time of the boycott?

A No, sir. I didn't know he ever had it.

Q Did you hear about the Borden Milk man getting stopped for delivering milk to Addison School?

[12888] A No, sir.

Q Somebody slashed a tire on his truck and threw the key away and pulled the wires off his truck?

A No, I didn't hear that.

Q I believe you said you heard about Will Shaifer getting——

A Beg your pardon.

Q You heard about Will Shaifer getting beat up during the boycott?

A I don't believe I told you that.

Q You didn't hear that?

A No.

Q Do you know Joe Heath and his wife?

A No, sir, I don't believe I know him.

Q Did you hear anything about a person named Joe Heath and his wife being threatened by a black woman by the name of Marie Collins?

A No, sir.

Q Did you know a black man in Claiborne County or Port Gibson by the name of James Bailey? A young black man?

A James Bailey? That name sounds familiar but I wouldn't say for sure that I know him.

Q Did you have any understanding with James Bailey who tore up the flower beds of a black woman by the name of Nig Butler?

A No, sir.

Q Because she was buying groceries from the Piggly-Wiggly Store?

[12889] A No, sir. Never heard that before.

Q Did you know Ella Lee Phelps?

A Yes, sir.

Q Did you know Ella Lee Phelps started to build a house before the boycott started, and she couldn't complete it because she was afraid to come and trade with Mr. Bobby Vaughn's lumber company there because he was under the boycott?

A I didn't hear that.

Q You knew Jasper Coleman?

A Jasper?

Q Contractor and carpenter?

A I know a Coleman, but I didn't know his name was Jasper, and he is a carpenter.

Q What age fellow is he?

A Well, he's not young.

Q He's a settled-age fellow?

A Settled-age fellow, yes, sir.

Q Did you understand that he was unable to finish several jobs that he had begun because he couldn't get materials because the boycott was on in Port Gibson Lumber and Supply Company?

A No, sir, I haven't heard that.

Q You haven't heard that?

A No, sir.

Q Did you hear about his tires getting slashed on Christmas during the boycott because he was violating the boycott?

A No, sir, I didn't hear that.

[12890] Q Do you know Alfred Shepherd?

A No, I don't believe I know him.

Q Did you know Tommy Rice during his lifetime?

A Yes, sir, I knew him. I didn't know a whole lot about him. I just knew he used to work in a meat market of Jitney-Jungle.

Q Of Jitney-Jungle?

A Yes, sir.

Q That's Mr. Watt Avery, isn't it?

A Yes, sir. I believe he worked back there.

Q He had a house in Port Gibson that was white—painted white, didn't he?

A I'm not familiar with his house.

Q You heard that he was violating the boycott, and his white house had black paint smeared on it because he was violating the boycott, didn't you?

A No, sir, I didn't hear that.

Q Do you know Suzie Gibson?

A I don't believe I know her.

Q Did you hear of an incident when it was said that Suzie Gibson had been trading with Mr. Norman Ellis' place there—you remember Mr. Norman Ellis and Mrs. Barbara Ellis and their variety store?

A Yes, sir.

Q You do remember that store?

A Yes, I remember that store.

Q You know that store went out of business during the boycott, don't you?

A I don't know. I'm not sure.

[12891] Q You're not sure?

A No, I'm not sure. I never noticed it going out of business.

Q You never paid it no mind, did you?

A No, sir.

Q Did you understand or have any information that Suzie Gibson had been stopped after she came out of Ellis Variety Store by Charles Evers and was told not to go back and trade there no more—that that store was under boycott?

A No, sir.

Q Did you ever trade with the Ellis Variety Store?

A I don't think so.

Q You don't know whether they had black clerks and cashiers or not, do you?

A No, sir.

Q Do you know Ernest Darden?

A I don't believe so.

Q Did you hear of an occasion right after the boycott when Ernest Darden tried to go into Piggly-Wiggly Store there on Market Street which is the main street of Port Gibson and apparently didn't know about the boycott, and was stopped by Buster Barber, Calvin Williams and a big crowd of blacks who told him he couldn't go in there and trade and the sheriff had to come help him out?

A No, sir, I didn't hear that.

Q You didn't hear about that?

A No, sir.

[12892] Q Do you know a black man in Claiborne County by the name of Dee Smith?

A Not Dee Smith. I don't know him. Some of these people's names that you're calling out, I imagine I know him, but you're giving them a different name from what I call them. If they've got a nickname I don't know them by their real name. When you get some of those names that sound familiar, you got me on some of those last and first names.

Q I'm going to get you with this one. Do you know Shorty Wyatt, the jailer there?

A Yes, sir, I know him.

Q His real name's Roosevelt Wyatt?

A I believe it is.

Q How do you know that?

A Well, we used to work on deer camp together and cook down there. And I used to help him.

Q You knew about the time that he was going into Piggly-Wiggly to buy some food for the jail and was stopped by a black man by the name of Dee Smith and told he could not trade there because it was boycotted, didn't you?

A No, I didn't hear that.

* * * *

[Witness Johnny Cox]

[DIRECT EXAMINATION]

* * * *

[13627] Q How did you get the word that the boycott was put on the white merchants in Claiborne County?

A Well, I didn't get the word until they attacked me. When they attacked me, that's the only way I knowed about it.

Q Who attacked you?

A Eddie Lee Wells.

Q Eddie Lee Wells?

A Yes, sir.

[13628] Q What did he do to you?

A He told me to—he told my wife to not go in and get her clothes, and so she come told me. And so I went and got a town policeman to go with me.

Q Do you know about when that was?

A Yes, sir, that was along about the time the boycott was—about the middle ways of it.

Q So Eddie Lee Wells told you not to go in the white stores?

A Yes, sir. He told me I'd better not go get my clothes.

Q Did you and—were you and your wife together when he told you that?

A Yes, sir, we were together.

Q Where were your clothes?

A They were around there at the O. K. Cleaners.

Q Y'all were standing out—where were you standing?

A We were standing right in front of the store—when we were going in there, he said, "You'd better not go in there." And so I didn't have no nothing, so she said it'd be best you go get the town police or sheriff, and I told her, "All right." So I turned around and went right on across the street there, and he come over there with me.

Q Who came over with you?

A The town police.

Q What's his name; do you know?
A No, sir, I don't, but he's the chief.
Q Chief Porter?
A Yes.
[13629] Q Was Eddie Lee still standing there?
A Yes, sir, he was still standing there.
Q Who else was standing with him, if anybody?
A There was another fellow. I don't know who he was.
Q Do you know George Henry Walker?
A No, sir, I don't know him.
Q Do you know James Bailey?
A Yes, sir.
Q Was he there when Eddie Lee told you not to go in there?
A No, sir, I don't remember him being there.
Q Were any other people standing around with you——
A Yes, sir, it was about half a dozen there—I imagine trying to go in and do like I was—go in and get the clothes. He come up there and made the remark and had his hand in his pocket and all like that. I imagine he thought like I thought that he was going to do something to them.
Q Were the other people standing around—were they black or white?
A Yes, they were black.
Q Do you know Calvin Bailey?
A Calvin——

BY MR. WILSON:

Your Honor, I'm going to object. The witness said he didn't recognize—didn't know the names of the other people that were there.

[13630] BY THE COURT:

He hasn't said that this other person was there, Mr. Wilson. He just wondered if he knew Calvin Bailey.

Q Do you know Calvin Bailey?

A No, sir, I don't know him.

Q You said you knew James Bailey?

A Yes.

Q Did you ever have any conversation with James Bailey about the boycott?

A Well, I asked him why did they have something like that on because it was against the poor people. We didn't have nothing—no where to get nothing but the groceries of the white people he was trying to get. We didn't have anymore help among ourselves to get nothing so I was going to go on like I was going and they told me it'd be best not to do that. That's the only way I knowed of doing. That's the way I was going to do.

Q Did you observe the boycott?

A No, sir.

Q Did anybody else ever try—did any other members of the black race down in Claiborne County tell you not to trade in the white stores?

A No, sir. He was the only one.

Q Was your house ever shot into?

A Yes, sir.

Q Tell the Court how that happened?

A Well, I was in the house there—me and my wife—laying down, and so all at once somebody laid three shots. [13631] And it just miss my wife's head just about that far.

Q What—did it come through the window or through the walls?

A No, sir, through the wall. So I went out there and I was going to get my gun. My gun's out there in my truck, and I was going to get my gun. And when I went out the door, they shot at me and missed me by about that far—you know, about that much from missing me,—you know, when I went to get my gun out of the truck.

Q Now you indicated about eight inches?

A Yes, sir, about eight inches, when I went to get my gun out of the truck.

Q What kind of gun did you have in your truck?

A I had an automatic pump gun.

Q Shotgun?

A Yes, sir.

Q What were they shooting at you with?

A Well, it looked sort of like—on the dent of the pickup, it looked like a pistol that they shot at me with then, but the shotgun—the gun that they shot the house with, it was—it had been a shotgun because there were fine holes all in the door.

Q What size shots; do you know?

BY MR. WILSON:

Your Honor, I'm going to object to this whole line of questioning and move that the questions and answers be stricken unless somehow it's shown that the people that were doing the shooting were defendants in this case, and that it had to do with [13632] the boycott.

BY THE COURT:

This is going to have to be tied in, Mr. Wilson, but I'm not going to require Mr. Gore to put on every bit of this testimony at one time. It takes some questioning to ties [sic] these matters in. I'm listening to this, I want you to understand, with the understanding that this will be tied in to this case.

BY MR. WILSON:

I would like a standing motion that it be stricken if not tied in.

Q About how long had the boycott been on when your house was shot into?

A It had been on about three weeks?

Q When you ran out to your car and you were shot at again, did you see anybody?

A Yes, sir, I saw them.

Q Who was it?
A Eddie Lee Myles—Eddie Lee Wells.
Q Was he by himself or with somebody else?
A No, sir——
Q Was there anybody else with him?
A Yes, sir, there was somebody else with him.
Q Do you know who it was?
A Yes, sir, his name was Neal.
Q Neal?
A Yes, sir.

* * * *

[13635] Q Was anybody else in the house with you when they shot into it?

A Yes, sir, my wife and children were in there.

Q How old are your children? How many do you have?

A I've got six, but it wasn't but three of them with me along in there.

Q Did—back to this cleaners. Did Eddie say anything to you when you came back with Chief Porter?

A Yes, he told me he'd see me. That's all he said was, "I'll see you."

Q What did you understand that to mean?

A He meant that he was going to try to do something to me. So I went up there and talked to the sheriff, and he said—he told me, "Well, has you got a gun?" I said, "Yes, sir." And he said, "Stick it in your pocket." He said, "if he attacks you, let him have it.["]

* * * *

[CROSS-EXAMINATION]

* * * *

[13648] Q Mr. Cox, you said that W. L. Neal is a member of the NAACP?

A He was.
Q How do you know that?
A He said he was.
Q When did he say that to you?
A I don't know why he said but that's what he said.

Q When did he say it to you?

A I couldn't—I wouldn't count the times he said it but he said he's a WNP. He's the one that shot my house there.

Q He said he was a member of the NAACP?

A Uh-huh.

Q How do you know that he was?

A He said he was.

Q When did he say that to you?

A I wouldn't count the times he said it. I didn't have no count when he said it. I couldn't go on and tell you about what day it was because I didn't have almanac.

* * * *

[13658] Q How long have you disliked Eddie Lee Wells?

A I ain't disliked him. You'd dislike anybody if they shoot in your house, wouldn't you?

Q How long have you disliked him?

A I don't dislike him. I don't like nobody shooting in my house. I don't dislike nobody. I loves everybody, but if they do something wrong to me, I don't [13659] prefer that.

Q Do you like Eddie Lee Wells?

A No, I don't like him. No.

Q How long have you not liked him?

A Since he done that shooting in my house.

Q It didn't bother you that he stopped you from going in the cleaners?

A I was going to get my clothes. That's the reason I got the town police. I was going to get my clothes.

Q I think you told Mr. Gore that the shotgun blast came through the door?

A It didn't blast. I told him the shot came through the door.

Q You can show him that right now?

A I can show it to you. Do you want to go down there?

Q Do you still live in that house?

A No, I've moved out of there.

Q The house is still there?

A The house is still there. Do you want to go down there.

Q Do you own that house, Mr. Cox?

A I'm supposed to.

Q How many different houses have you lived in in Hermanville since that boycott?

A Just one.

Q Where do you live now?

A I stayed in Hermanville—the other side of Hermanville.

Q Where was the house that you burned down last [13660] October?

A It was out there near Carlisle. I didn't say nobody started the fire. I said it burned down. How it caught, I don't know. I said awhile ago I didn't know how it caught, and I don't.

Q Several times in your testimony, Mr. Cox, you used the word attacked. "You were attacked by Eddie Lee Wells." Did he hit you?

A He didn't hit me but he had his hands in his pocket. That was a threat, wasn't it?

Q What do you mean by the term attacked?

A Well, when a person comes up to you and tells you don't do something another and has his hands in his pocket, what do that represent? Now you answer my question, and I'm going to answer yours.

Q I would simply like to know since you used the word attacked—

A That's what I'm asking you now.

Q What do you mean by the word attack?

A Attack means stopping you.

Q He didn't touch you?

A No, he didn't touch, but I imagine he would have touched me if I hadn't gotten the law. And I run into trouble so that's why I went and got the law.

Q Now when was this that Eddie Lee Wells tried to shoot in your house?

A I didn't have no calendar or nothing. Just like I said, I don't know. I wasn't keeping no—

Q When was his trial?

[13661] A I don't know. That was the same year that he shot in my house is all I can tell you.

Q Were you called to testify?

A Called to testify?

Q At his trial of shooting in your house?

A Yeah, they done what they were going to do but it wasn't no good.

Q He actually went to trial?

A Yeah, he went to trial, sure did.

Q For shooting in your house?

A That's right.

Q When was that trial, Mr. Cox?

A I don't know. I couldn't tell you.

Q When was W. L. Neal tried for shooting in your house?

A The same day he was. Both of them was together.

Q Were they convicted?

A I don't know whether they was or not.

Q Do you not know, Mr. Cox, that no one was ever tried for shooting in your house?

A They were supposed to have been trying them.

Q You told the sheriff who it was?

A I told the sheriff who they were.

Q Did he tell you he was going to arrest them?

A He did arrest them.

Q And they were charged?

A I couldn't tell you what was done, because I don't know. When I said something, I want to know what I'm talking about. I ain't going to say nothing I don't know [13662] what I'm talking about. You'd have to ask some of them about what they do because I don't know.

Q If I said to you, Mr. Cox, that the records in Claiborne County show that no one was ever tried for shoot-

ing in your house including Eddie Lee Wells and W. L. Neal, you would have no reason to doubt that?

A I would have to believe what you said if I didn't know. Can you show it to me?

Q Mr. Cox, as a matter of fact, you don't know who shot into your house?

A Yeah, I know who shot in there. I was looking at them when they shot into there. I done said that a dozen times.

Q Mr. Cox, what do you know about the NAACP?

A I don't know a thing in the world about them. I know it's just dirty. That's all I know. The dirtiest thing—you want me to tell you the truth, don't you? That's the dirtiest thing you'd ever represent because they ain't no good to you and me and to nobody else. They ain't no good.

Q Why do you say that, Mr. Cox?

A I ain't ever—seen nothing good but seen people's houses burned up and burned up and people getting shot at and stuff like that. I don't appreciate nobody stirring nobody's families and including mine. I wouldn't stir your family by shooting in your house.

Q Did the NAACP have anything to do with shooting in your house?

A That's what they supposed to have had. They [13663] said they belongs to it so they had something to do with it.

Q Did you think that the NAACP was behind that?

A They said they belongs to it.

Q Do you believe that they were behind most of the trouble that happened in Claiborne County?

A Now I couldn't answer that because I don't know. I just say what they said.

Q What other things make you think it's a dirty organization?

A Well, because I ain't seen nothing good they done. The things they've done, there's been something wrong with all they did.

Q Would you like to see it go out of business?

A Who?

Q Would you like to see the NAACP go out of business?

A That's no concern—that don't concern me at all just so they don't confuse me.

Q Would you like for them to leave Claiborne County?

A I ain't got nothing to do with that. They can stay where they want to just so long they don't interfere with me. That's something—I can't tell you what to do. You're grown and it's a free country and everything. If they want to stay here, they can stay here, but just don't concern me and my family. That's all I got anything to do with.

* * * *

[13666] Q Did you ever tell Eddie Lee Wells that you knew he shot in your house?

A Never did.

Q You never spoke to him about it?

A I never said nothing to him.

Q Did you ever speak to W. L. Neal about it?

A I haven't told none of them.

Q You continue to see Eddie Lee Wells after that?

A I saw him a lot of times.

[13667] Q Standing in front of the stores?

A That's right.

Q Did he speak to you after that and say, "Don't go in some of these other stores."

A Not then he didn't.

Q Has he ever said don't go in a store after the cleaning incident?

A No more he ain't.

Q Do you know whether your wife, Mrs. Cox—Mrs. Susie B. Cox has been stopped by Eddie Lee Wells on any occasion other than at the O. K. Cleaners?

A That's all. That's the only one she's been stopped.

Q Was she stopped by anyone else as far as you know?

A Not as I knows. I haven't heard her say.

Q How old are your children, Mr. Cox?

A I've got one 22 and one 28 and I've got one 17.

Q Are any—have any of your children told you they were stopped from going in any stores?

A They ain't told me anything as far as up to this distance they ain't. I don't know what they will tell me.

Q It would be correct to say that other than O. K. Cleaners incident involving you and your wife, your family has not been stopped from trading wherever they wanted to trade?

A That's right.

* * * *

[Witness Susie B. Cox]

[DIRECT EXAMINATION]

* * * *

[13673] Q Did you stop trading with the white stores when the boycott was on?

A Well, if you want to hear the truth, I was scared.

Q Did you stop trading with them?

A I did. I didn't go in there but my husband [13674] never did stop going in there.

Q What were you scared of?

A Well, they had done beat up some colored people around there, and I had done heard about it. I didn't want nobody hitting on me.

Q Around where had you heard it?

A It was a fellow called Ball Martin.

Q Ball Martin?

A Yeah, he telled me that the NAACP had beatened him up for going in the white stores. He was on his way home, and said—they tell me when they get ready to beat you, they'll put some blind fold on you where you can't see who they's is.

Q Where did you hear this—

BY MR. WILSON:

Your Honor, at this point—

A Around there at Hermanville.

BY THE COURT:

Wait just a minute.

BY MR. WILSON:

We're going to have a standing objection on that according to hearsay and with regard to relevancy.

BY THE COURT:

Well, this is a totally different question from the one that you objected to before, Mr. Wilson. And if you're objecting to her testimony on the grounds of hearsay that somebody told her, then [13675] your objection is well taken and I'm going to sustain it.

* * * *

[13680] Q When Eddie Wells told you not to go in the store there—the cleaners, did he take any action as if he was going to harm you in any way?

A No, sir.

Q Do you know whether he did anything towards your husband in the way of a threat?

A No, sir, not as I knows of. They were working together down there at the mill, but after then a couple of [13681] nights later, somebody shot in our house.

Q Where were you when the shot went into your house?

A I was laying down in the bed. The head of my bed was just about in the door near about.

Q How many shots do you remember hearing that were shot?

A I was—when the first one shot, I was so scared until I don't know about no more.

Q Do you know what happened after that?

A My husband got up and went out there. He was going to get his gun because he left his gun in the pickup, and I don't know what happened then.

Q Was there anymore shooting after that?

A Yes, sir, I heard some shooting but I don't know who done the shooting.

Q Later on did you discover a bullet hole in your pickup?

A Yes, sir.

Q Where was the bullet hole? . .

A On the—right down there below the glass on the door.

Q There was a bullet hole in the door below the glass?

A Yes.

Q How many bullet holes did you discover in your husband's pickup truck?

A Well, one big old round hole was in the pickup, but there was a heap of little old sprinkle holes in my door.

* * * *

[13692] Q Do you know what Eddie Lee Wells' nickname is?

A Called him Hook.

Q Hook? Do you still live in the same house that got shot into?

A No, sir. I didn't stay in that house too long.

Q How come you moved?

A Well, one reason I moved was I had a better house to go in and then my mother was kind of scared for one thing.

[13693] Q Kind of scared of who?

A I don't know. You get somebody to come shoot in your house and see how you feel.

Q It frightened you when you got shot at?

A Sure. I'm already scared of a gun anyway.

Q Are you still scared?

A I ain't too brave.

Q You don't like to get shot at?
A No.

BY MR. SHELL:

Indulge me a moment.

(The hearing was recessed for lunch.)

BY MR. SHELL:

No further questions.

CROSS-EXAMINATION

BY MR. WILSON:

Q Mrs. Cox, I would like to go over some of the testimony you have given in answer to Mr. Shell's questions. First, I think you testified that you approached Eddie Lee Wells and asked him if it would be okay to go in that store since the boycott was back on; is that correct?
A That's right.
Q He didn't approach you; you went up to him?
A That's right.
Q And his answer to you was, "I wouldn't advise you to do it."
A That's right.
Q Did he say anything more to you?
A No. No more.
[13694] Q And that's when you returned and reported to him what had happened?
A That's right.
Q Did your husband then go to talk to Eddie Lee Wells and then go get the police chief?
A He went and got the police.
Q He didn't approach Eddie Lee Wells at all?
A Uh-uh.
Q I think you also testified that when the police chief and your husband got to the cleaners, Eddie Lee Wells was no where in sight; that he had walked on off?
A I didn't see him.

Q But you saw them when they went to the cleaners to get your coat?

A That's right.

Q Now with regard to the occasion when your home was shot into, Mrs. Cox, could you tell the court immediately after the shooting—the first shot, your husband went outside; is that correct?

A He didn't go out just as soon as the shot. He grabbed me and told me to get down first. And he got down and peeped through the window. I don't know whether he thought the person was in the yard or where he was, but anyway he did go out and got a gun.

Q How long after the first shot was fired before he went outside?

A I don't know. About three or four minutes.

Q And I think you testified that when you heard some shooting was when—after he went out?

[13695] A Uh-huh.

Q And how long was he outside the house?

A He wasn't out there too long.

Q And when he came back into the house, what happened?

A Nothing, but he got his gun and squat down to the window and said—he peeped out to see if he could see anybody.

Q Did you have any conversation?

A Me and my husband?

Q Yes, after he came back in the house?

A No. I was too scared.

Q When did you next talk about this—the following morning?

A No, because he got on up and went on to Port Gibson and got the sheriff and brought him out there.

Q Did he tell you that he had seen the people?

A Yeah, he said he had seen somebody.

Q Did he tell you he saw them?

A No, he didn't tell me who he saw.

Q Did he tell the sheriff who he saw?

A No, but he told the sheriff who he thought it was. He told him he saw somebody who he thought it was.

Q Now you mentioned something earlier, Mrs. Cox, about some kind of hearing where there was no judge present?

A That's right.

Q And nothing ever came of it. Will you tell us more about that?

A I don't know nothing else to tell other than [13696] what I said. I mean, nobody was there but Mr. Dan McCay and Eddie Lee Wells and myself and Johnny and two or three more people and a deputy sheriff.

Q Did the sheriff ask you questions?

A Uh-huh.

Q And asked your husband questions?

A Uh-huh.

Q Did he question Eddie Lee Wells?

A Uh-huh.

Q Did—

A I guess he questioned Eddie Lee. We left Eddie Lee there. When he questioned me and my husband, he told us he was through with us, and we went on to the house.

Q As far as you know, no charges were ever placed against Eddie Lee Wells?

A That's right.

Q At least you were not asked to come back to the courtroom like this to testify?

A No, sure wasn't.

Q Was W. L. Neal there?

A No, he wasn't there.

Q Other than this occasion when you approached Eddie Lee Wells and asked him about going into the stores, did you ever do that with anyone else—whether you could go in any of the stores?

A No.

Q Did anyone ever stop you from going into a store?

A No, because I never did go in there when the boycott was on.

[13697] Q Your testimony was that you were afraid?

A That's right.

Q Do you know—do you recall the names specifically of who said to you the people would beat you up if you went to the stores?

A No.

Q You just generally heard it from four or five people like you testified?

A That's right.

Q You don't recall their names?

A No.

Q Did you ever hear in the community that the NAACP was telling people in the community to be peaceful?

A No.

Q Did you ever hear about anything that went on at the NAACP meetings?

A Uh-uh.

Q Do you know anything about the organization of the NAACP?

A No more than what they said—the NAACP. That's all I know.

Q You don't know anything about what they stand for?

A No, I sure don't.

* * * *

[Witness Eddie Lewis]

* * * *

[DIRECT EXAMINATION]

* * * *

[13741] Q Before the boycott started, did you trade with the white stores there in Port Gibson?

A I've been trading with them for years. Waddy Abraham, I've been trading with him since he opened up a grocery store.

Q Waddy Abraham operates the Jitney Jungle?

A Yes, sir, the Jitney Jungle store.

Q Is that where you buy most of your groceries?

A Yes, sir, that's where I've been doing my trading, and I go there and buy my groceries, and if I didn't have no money, I would pay for it the first of the month.

Q After the boycott got started, did Mr. Rudy Shields tell you anything about the boycott and what you could and couldn't do?

A I met him on the street there. He told me—and I'd better stay out of them stores. And then I told him I'm a full grown man. I spend my money where I want to spend it.

Q When was this that he told you to stay out of the stores; do you recall the year?

A Well, it was when that boycott was going on.

Q Had it been going on very long when he told you that?

[13742] A It had been going on.

Q Some little while?

A Yes, sir, some little while.

Q Did you see Mr. Shields on the street from time to time when you'd go into town?

A No, sir, I ain't seen him but one time in my life.

Q And that was the time that you described to us?

A Yes, sir. He stopped me on the street and told me I'd better stay out of them stores. And I told him I'd spend my money where I wanted to spend it. I was a free man.

Q Had you been in a white store and come out of it when he told you that?

A Yes, sir.

Q Which store had you been into?

A I had went into Mike Ellis and Jitney Jungle.

Q Both of them?

A Yes, sir. I never did quit going in those stores.

Q Now did you have any problems with anybody about going into Mr. Smith's liquor store?

A Uh-huh. That was fact.

Q Tell us about that?

A I had a half pint of whiskey, and I went down to a cafe and decided on a table, and I got some cups, and then Fats—I thought he had come up there to get him a drink. He snatched the half pint of whiskey and went on [13743] across in the street and took my whiskey.

Q Did he say why he had taken it?

A He said because I had gotten it from the liquor store.

Q He said he took it from you because—

A Yeah, that's right.

Q What liquor store did you get it from?

A Mr. Smith was running the liquor store.

Q Smith a white man?

A Yes, sir, he's a white man.

Q Did you have any further discussion about that matter with Fats?

A Sir?

Q Did you have any further conversation with Fats about that?

A Uh-uh. No, sir.

Q Did he call you any names or ugly names?

A He said I was Uncle Tom.

Q Who told you that?

A Fats told me that.

Q Is Fats Alfred Lee Davis?

A Yes, sir. And he snatched the whiskey. He went on out—Uncle Tom at the liquor store, but I didn't have nothing for—I didn't have nothing to hit him with or fight him with, and I just let him went ahead on.

* * * *

[Witness James Gilmore]

[DIRECT EXAMINATION]

* * * *

[13704] Q Going back to the night on August 22, 1966, and about nine o'clock in the evening, who was sitting with you in this particular room of your house?

A There was my wife and my baby, and we always were sitting there.

Q What was your child's name?

A Allisa Ann Gilmore.

Q How old was Allisa Ann Gilmore on August 22, 1966?

A To be really exact, I really don't know. She was real young.

Q Was she less than two years old?

A I would say, yes, sir.

Q Now what happened on that night—did anything unusual happen?

A Yes, it was.

Q Tell the Court what happened to you on that [sic] [13705] A Well, as I recall, like I said, we were sitting there about ready to turn in for bed, and there was this automobile of some type—there was a squealing noise.

Q What kind of a noise was it? Tell the Court—

A I would say it was identical to something like somebody putting on brakes to keep from hitting something or it came to a stop too fast, because there was a squealing of tires.

Q What did you do when you heard this squealing of the tires?

A Well, my wife asked me to get up and see if I could see who it was—whether it was someone involved in an accident or something, so I did. I walked to the window, and so I taken a look and there was this car. It was a light green Chevrolet, I believe, with a white top—'59 model. And it had just about came to almost a direct stop, but it was still proceeding a little bit. There was this fork just to the left of my house—down below my house going south. The car pulled ahead and turned around in this fork—that was to the left travelling south. But it was still a stopped there and then it backed out and turned around and came back by and was driving real slow again.

Q By your house?

A Back by my house travelling north this time.

Q Driving in a northerly direct?

A After which the car went up which was a fork, I would say, well, couldn't have been over two or three hundred feet or maybe more just above going north, and then it pulled in the left fork and turned around and started back [13706] south. Only this time at more rapid speed which the car was speeding. All of a sudden it got along in front of the house and squealed brakes again and a blue flash came from the car. And when a blue flash came from the car, I just fell out in the floor.

Q What was the blue flash car—when you saw the blue flash, what did you do then?

A Well, I momentarily just hit the floor, and I yelled to my wife—I said, "Mary—

Q Slow down just a moment.

A I momentarily just fell out on the floor.

Q Did you say anything to your wife?

A Yes, I said, "Mary, hit the floor. Someone is shooting into my house."

Q And then when you hit the floor, what then did you do next?

A Well, I heard the car when it pulled off, it spinned its tires on takeoff. I said to my wife, "Give me my gun quick." So I only had on—

Q You said to your wife to give you your gun?

A Give me my shotgun, yes, sir.

Q How many guns did you have in your house?

A At that time I only had one.

Q And where was this gun?

A This shotgun always stayed in the corner by the head of my bed.

Q Was that in the same room?

A The same room that we were in.

Q Did she hand you your gun?

[13707] A She did.

Q What do you do then?

A I then grabbed up my kid with one arm, and she come with me—my wife. So once I got to the car, she asked me for the baby. I gave it to her. So there was this carport just beside me. Of course, I didn't have to go all the way across. And so we got into my car which was already turned around.

Q Let's get that straight. Your car was turned around with the front pointing to the highway?

A Pointing towards the highway, that's right.

Q Go ahead. Did you get into the car?

A We got into the car.

Q All three of you?

A All three of us.

Q What did you do then?

A I rushed as quickly as I could into the highway.

Q Did you catch up with this car?

A Yes, I did.

Q Which you described as a Chevrolet?

A Yes.

Q What year was that?

A I believe it was about 1959 model, I believe.

Q Was it a sedan or two door or what was it?

A Sedan as I recall now.

Q Four doors?

A Four doors, yes, sir.

Q Go ahead now. You were—which way did you [13708] travel when you turned on to the highway?

A I travelled south.

Q Was that in the direction that the car had taken when you saw it pulling out after the shot had been fired?

A Yes, it was.

Q Did you eventually catch up with the car?

A I did.

Q Were you north or south of Russum when you caught up with it?

A I would say I was maybe three miles south of Russum.

Q When you caught up with this car, did you see the license number of the car?

A Yes, sir, I could.

Q Do you recall what that license number was?

A No, sir, I don't now.

Q Did you recognize the Chevrolet as the car that you had seen from your window?

A Yes, sir.

Q What did you do when you caught up with him?

A Well, I just kept blowing my horn and also, I pulled up against them and tried to force them off the road. I did a little bit of everything to try to stop them.

Q Did they stop?

A Not at the present, no sir.

Q All right, now how long did you continue this activity down Highway 61?

A I would say at least a mile and a half or two [13709] miles.

Q Did you come then to another turn off in the road?

A Yes, I did.

Q What turn off was that?

A That was the road, I believe, leading into Alcorn A & M College. I don't know the name of this road, but it was a road.

Q Did you continue to blow your horn?

A Yes, sir, I did.

Q What happened then when you got to this turn off—what happened to this car when you got to this turn off?

A Well, finally after staying on my horn blowing and then pulling up against him, so the car finally came to a stop, and I was about a mile and a half approximately on this road that they turned off.

Q Did it come to a stop on the Alcorn road?

A Yes, sir, they did.

Q What did you do when the car stopped?

A I grabbed my gun immediately.

Q Did you come to a stop?
A Yes, sir.
Q You got your—
A Grabbed my shotgun, yes, sir.
Q What kind of a gun did you have?
A It was a double barrel, old model.
Q Shotgun?
A Yes, sir.
Q What was the gauge?
[13710] A 12 gauge.
Q What did you do then?
A I ran up to the car.
Q Which side of the car did you run up to?
A It was on the left side of the car—the driver's side.
Q Now when you ran up to the car, did your wife get out of the car?
A Yes, sir, she came out behind me.
Q When you got to the car, how many persons were in the car?
A There were six—three in the back and three in the front.
Q Did you recognize any of the occupants?
A Yes, sir, I did.
Q All right, who was driving the car?
A It was Elmo Jones Scott, I believe they call him.
Q Did you know Elmo J. Scott prior to having seen him that evening?
A Yes, sir, I had seen him—I had seen him a number of times in Port Gibson.
Q Now who else did you see in the car that you recognized?
A There was a guy there by the name of Calvin Bailey.
Q Calvin Bailey?
A Calvin Bailey.
Q Had you known Calvin Bailey before that evening?
[13711] A I had, yes, sir.

Q Where was Calvin Bailey sitting when you got up to the car?

A I believe as I recall right, Mr. Bailey was sitting directly in back on the left side behind the driver.

Q Behind the driver?

A Yes.

Q Did you recognize any other persons sitting in the car?

A There was another guy I recognized—James Bernard Whitney, I believe they called him.

Q Had you known him prior to that night?

A Yes, sir.

Q Now when you—where was he sitting?

A I believe he was sitting, if I recall right, on the right hand side in the rear, if I'm not mistaken.

Q Is that your best judgment?

A Yes, sir.

Q Now when you approached the car, did you have your gun?

A Yes, I did.

Q Did you say anything to them at the time you walked up to the car?

A No, sir, I didn't.

Q Did anyone in the car say anything to you?

A Yes, sir.

Q What did they say?

A There was one guy that said, "Man, ain't nobody shot in your house."

[13712] Q Had you asked them if they had shot in your house?

A No, I hadn't said nothing.

* * * *

[13725] Why didn't you observe the boycott?

A Well, I think basically my reasons were this, and only I would say when I had a dollar, I would go out and spend it at a place where if I didn't have a dollar,

I still could get what I wanted to. And that was basically my reasons for not observing it.

Q Are you saying that you would go to the Michael Smith's store and get credit whenever you needed it?

A Yes, sir.

Q Would you go to any of the black merchants in Claiborne County and get credit?

A Well, they were a possibility, but I had never had much dealing with them. I had never tried them, so I had been dealing with this guy ever since I reached manhood. So I had never changed. He had been good to me, and I tried to be good to him.

Q Did you try to make any effort to hide the fact that you were trading with one—Michael Smith?

A No, sir, I didn't.

Q What was the general knowledge of the community about the attitude of the members of the NAACP and the blacks who were observing the boycott?

[13726] BY MR. SANDERS:

We're going to object to that unless some predicate has been laid to show that he has some way of knowing the attitude of the NAACP.

BY THE COURT:

Yes, sir, I'm going to sustain that objection. I don't think that the proper predicate has been laid.

Q Did you have any knowledge that there—the blacks did not want other blacks trading with the white people?

A Well, I would say that the word had been around. I had been around town several times, and there had been talk.

Q Had you heard the talk?

A Yes, sir, I had—no more than among the people. That's all. Not anyone came to me and told me that, but I heard it from downtown.

Q What race of people did you hear talking about the NAACP and the blacks objecting to other blacks trading with the white people?

A It came basically from the blacks.

Q Where did you hear this general talk?

A Well, it was just mostly on the street. Just open conversation that people would be talking.

Q On the streets where?

A There in Port Gibson.

Q Was it generally talked on the streets or—

A I wouldn't say it was generally talked, but I had heard it two or three times around when I had been up there. [13727] Guys would be discussing this matter, and I would walk by. You couldn't help but hear anything but what was going on. So I knew that it was against their law to go in to those merchants and be trading.

Q Against whose law?

A Well, against the NAACP, I would say.

[13729] Q Did you hear the black people say in substance when you would be in Port Gibson with reference to the attitude of the NAACP and other black people about the blacks going into the white stores?

A Well, there was—

BY MR. SANDERS:

Object as being hearsay.

BY THE COURT:

No, I'm going to let him answer that question if he can answer it.

A That was a Friday evening, and I had returned off of my job, so I had a bill to pay. And as I was going into the Western Auto, there was a young man in front of me. So there was a lady and several others standing there, and they were all in a huddle. So—

Q Were they black or white?

A They were black. So when this young man started into the store, she called him. And I did hear her tell him,

"Young man, you know you're not supposed to go in there because it is boycotted." And "It's against our laws." That's the way she said it if I recall right.

* * * *

[13731] CROSS-EXAMINATION

BY MR. SANDERS:

Q Mr. Gilmore, did the Head Start program in Claiborne County have anything to do with the shooting in your house?

A Well, I would like to answer like this, not to my knowing anything about it did it have anything to do with it.

Q Did the NAACP as an organization have anything to do with it?

A No, sir, I don't believe so.

Q Did anyone other than the six people you saw in the car that night have anything to do with—other than the six people you saw in the car have anything to do with the shooting in your house?

A No.

Q Do you attribute that shooting in your house to anyone other than just those six?

A I would say the shots were either fired by one of the six men in that car which I knows it was.

* * * *

[Witness Willie Myles]

[DIRECT EXAMINATION]

* * * *

[13752] Q Did you ever receive any threats about the boycott?

A Well, somebody called my wife and told her they were going to burn my house down, and that she wouldn't have no job at the school.

Q Why is that?

A Because we didn't participate in the civil rights.

Q You didn't participate in the boycott?

A In the boycott, yes, sir.

Q How many times did your wife get threatening phone calls?

A She never mentioned it but one time.

* * * *

[13754] Q Were you ever stopped on a road by any black men?

A Yes, sir, I was coming from Le Tourneau and some stopped me and said they were going to whip me because I bought gas from the wrong place.

Q Where did you buy gas?

A Well, I bought gas where I've always been getting it on 61.

Q Where was that? Was that a white—

A No, sir, at a filling station. No, sir, it was white, but a colored boy was working there.

Q The man you bought gas from was a white man?

A Yes, sir.

Q What place was that?

A That was a filling station to the right coming out of Port Gibson on 61.

Q Do you know the man's name that owns it?

A Not right off, I don't know his name.

Q These men—where were they from?

A Well, they were right here in Port Gibson.

Q I mean, where were these men from that stopped you and told you that you bought gas in the wrong place?

A They were from Fayette. They were living down there towards Fayette somewhere.

Q Were they working at Le Tourneau's too?

[13755] A Yeah.

Q Do you know who they were?

A No, sir, I don't know them.

Q Had you ever talked to them before?

A Well, I might have talked to some of them there on the barge, I know. We pretty near worked together.

Q Had you been warned before that you might get whipped by trading with the wrong people?

A No, sir, that's the only—

Q Did some of your friends tell you you'd better be careful?

A I had some to tell me that I'd better watch because they were liable to burn my house up and things like that. I told them, "I won't be the first."

Q Was it generally known around Hermanville that something might happen to a black person who kept trading with the white merchants?

A Well, that's the way they were talking. Anything could have happened.

Q I mean, all the colored people around Hermanville knew that there may be some danger—

BY MR. SANDERS:

Object to a leading question.

BY THE COURT:

Sustained.

Q Did you know of any other black people in and around Hermanville and Claiborne County that knew about something might happen to them if they broke the boycott?

A Well, I imagine some of them was afraid, and [13756] when they would do these different things, something would happen.

Q Do you know a colored woman named Addie Speed?

A Yes, sir.

Q Did you ever have any conversation with her about the boycott and your name being called out in church?

A She told me once they had my name in the meetings about going in the stores.

Q Name at what meeting?

A At the civil rights meeting that they were having.

Q What do you mean by civil rights meeting?

A Well, they had a big church out—they had a big meeting in different churches, and she was—

Q Are you talking about the NAACP meetings—that's where your name was called out?

A Well, this was the civil rights people. They, you know, would have these meetings—just a big group of them going to church out there.

Q Do you mean the civil rights people or the NAACP or what?

A Well, I don't know whether they were all together or not but they would have a meeting every Tuesday night.

Q What church?

A I think it was First Baptist in Port Gibson or the Christian Church one. The one that they did the shooting in down there.

Q That's a colored Baptist Church on Orange [13757] Street?

A Yes, sir.

Q And Addie Speed told you that they had your name called out at the meeting?

A Yes, sir, she said they called my name in a meeting about going in the stores. I told her to let them call it.

Q How many of these men from Jefferson County—when they stopped you, what did you do?

A I got out of the car with my gun.

Q What kind of gun did you have?

A I had a 32-20.

Q Pistol?

A Yes, sir.

Q Did they have a gun or do you know?

A I don't know what they had, but when I got out, they took off and went on.

Q How many men were in that car?

A It was four or five of them in there.

* * * *

[CROSS-EXAMINATION]

* * * *

[13773] Q How did you know what these men in the car wanted with you?

A Well, see when I went in the store to get my groceries, when I came back out, I had my car parked at

[13774] bus station. And when I put my groceries in the car, a fellow that owned the bus station said, "Well, this old guy is going to get behind you."

Q Who is the fellow you're referring to?

A I'm trying to call his name now. He owns the bus station. He runs the bus station in Port Gibson.

Q Is he black or white?

A He's white.

Q Did you ever have any conversation with these fellows in the car?

A No, I didn't. I just see'd the car, and this man said, "Do you want me to call the law?" And I said, "No, I don't need no law."

Q And then when you left the station, what did you do? Did you drive away on the road?

A Sure did. He called the police anyway. And I was getting in my car, and they said, "We'll go toward the bridge," which I said, "Y'all can stay here." I said, "I'm not worrying about them bothering me, because I don't them and I ain't going to bother them. Nothing is going to bother me." I said, "If y'all stay here, you won't be involved in whatever happens."

Q Now what—did they stay there?

A No, they went towards the bridge and turned around.

Q Are you referring to the city police of Port Gibson or the county police?

A See, the city police said, "We can't go no further than the bridge." And I told them, "Well, I'll take [13775] care of myself." I said, "If anything occurs, they won't be saying y'all had no parts in it."

Q How far did you drive before you stopped?

A I drove about approximately two and a half or three miles.

Q All right, what car did you stop?

A See, they were ahead of me. And when they pulled off the road, I stopped a distance behind them and got out.

Q What do you mean when you say, you got out?

A Well, I didn't know what they were telling me to do or nothing. I was going to get out and I was going to stay until they came back and try to do what they wanted to do or try. When I got out with my gun, then they took off.

Q Do you know anything that they intended to do?

A I don't have no idea other than it must have been up to something another.

Q What made you think they were going to do something to you other than the conversation you had at the station?

A Well, quite naturally if you go get in your car now, I'm watching you or something, you're going to have some kind of suspicious ideas or something.

Q You were kind of suspicious of them?

A Well, as I said, when I came the fellow said, "They were watching my car."

Q Were you suspicious of them before this man [13776] at the station told you—

A No, I had no ideas or nothing. I just done parked my car and walked on and got my groceries, because I had to go right back to work.

Q How far behind this car were you when you stopped?

A I was a pretty good ways.

Q I don't know quite what pretty good ways is.

A I wasn't real close to them at all. Actually about the distance of a block and a half or two blocks.

Q Did anybody in the car have you get out of the car?

A They could see me when I got out because they pulled over and stopped, I knew it was the same car.

Q I'm saying, did they get out of the car?

A No, because when they pulled over and stopped, well, I stopped immediately, because I didn't want to get too close.

Q Did you fire a shot?

A No, I didn't.

Q Did you waive [sic] your gun?

A No, I didn't.

Q Do you know whether or not they saw your gun?

A Well, they must have seen something. They pulled off. I'm not saying that they did but they had been looking back.

Q And they did pull off?

A And they pulled off and went up the road not too far and they turned off the road. When I passed, [13777] they turned off and I never did see them no more.

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[13778] BY THE COURT:

Q Now you testified that these men in the car were going to whip you because you had bought gas in the wrong place.

A That's what I was told.

Q How do you—they didn't tell you that, did they?

A No, sir.

BY THE COURT:

That's all the questions I have. You can stand aside. You are excused. You can go on back to Port Gibson.

BY MR. GORE:

One thing further, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. GORE:

Q Who was it that told you these men were going to whip you because you bought gas at the wrong place?

[13779] A It was a boy that was on the barge. He came to me and said, "You'd better watch it." He said, "Some boys said you bought gas at the wrong place, and said they were going to whip you going home."

Q You don't remember his name?

A No, sir, I don't know who the boy was but he come to me. And I said, "Well, I'm sure going home."

BY MR. GORE:

That's all.

BY MR. SANDERS:

If it please the Court.

FURTHER CROSS-EXAMINATION

BY MR. SANDERS:

Q When did this boy on the barge tell you?

A Well, he come to me—

Q Was this after or before you bought the gas?

A After I bought the gas that morning, I was on the barge. We had eaten dinner, and after we went back to work, he come and said, "You'd better watch yourself. The boys said they were going to whip you for buying gas at the wrong place."

Q Did you ask him how did he know about it?

A No, I didn't. All I told him was, "Well, they may." I said, "Tell them don't fail to do what they said."

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[Witness Jasper Coleman]

[DIRECT EXAMINATION]

• • • •

[13781] Q How old are you?

A Seventy-six.

• • • •

[13782] Q Prior to the time the NAACP put the boycott on the white merchants, did you trade with the white merchants in Claiborne County?

A I did.

Q After you heard that the NAACP had put the boycott on the white merchants, did you continue to trade with the white merchants?

A I did.

Q Did you ever stop trading with them at all because of the boycott?

A Not because of the boycott, no, sir.

Q Did you stop trading for any other reason?

A No, sir.

Q I'm going to ask you to recall on Christmas morning, 1966, did anything unusual happen to you or your property on that date?

[13783] A Something happened to my truck on that morning.

Q What kind of a truck did you have?

A Chevrolet—a 1934 Chevrolet.

Q Is that '34 or '64?

A That's '64 Chevrolet.

Q Was that a pickup truck?

A Pickup truck, yes, sir.

Q Tell the Court when you got up that Christmas morning, what condition—of your tires that—

A They were all four flat on the ground.

Q Did you examine those tires?

A I did.

Q Did you determine why they were sitting flat on the ground?

A It was stabbed with a knife.

Q Could you see the slashes in your tires?

A I did.

Q Do you know a man named Ike Turner?

A Ike Turner?

Q Yes.

A Yes, I know him.

Q Who is Ike Turner?

A He's Ike Turner.

Q Is he black or white?

A He's a colored man.

Q Did you have a conversation with him about why your tires were flat?

A Not at the present time. Not then.

Q Did you subsequently or after that?

[13784] A Later I did, we talked about it.

Q What did you learn was the reason that your tires were flat—that they had been slashed?

A Say, what was the reason?

Q Yes.

A I didn't know.

Q What did you learn was the cause——

A I learned when I went in the liquor store and come out with whiskey.

Q Whose store was that?

A Mr. Smith.

Q Is he white or black?

A White.

Q Well, had you gone in there?

A No, sir, I hadn't gone in there.

Q Did you observe the boycott or not?

A Did I go along with it?

Q Yes.

A Which way are you speaking of?

Q You didn't observe it, did you?

A Observed it how?

Q You didn't follow the black people in not trading with the—

A Oh, no, no, no.

Q Do you know Henry Gusta?

A Harry Gusta?

Q Harry Gusta?

A Yes, I know him. Me and him used to work together.

[13785] Q Where did you all work together?

A Oh, let's say—back in the fifties on up.

Q Where did you work?

A Carpenter work there in Port Gibson, Claiborne County.

Q Did you ever have a conversation with Harry Gusta about whether or not you ought to go in the Port Gibson Lumber Company or not?

A I never had a conversation with him, but he had stated that I'd better not go in there.

Q Harry Gusta said that?
A Yeah.

BY MR. SANDERS:

We're going to object. He just said he didn't have a conversation with him.

BY THE COURT:

I'm afraid that this man is confused on what a conversation is.

Q When did Harry Gusta say you'd better not go in—
A I can't recall at the present.
Q Did you hear him say it?
A How's that?
Q Did you hear him say it?
A Yeah, I heard him say it.
Q Where were you when you heard him say it?
A Oh, by the barber shop, I think I was.
Q What barber shop was that?
A Collins—Alexander Collins'.
[13786] Q Do you go in Collins' Barber Shop?
A I did.
Q Did you hear any of the conversation there in the barber shop about what would happen to black people if they traded with white people?
A Said, the boys would do whatever the spirit would tell them to do.

* * * *

[13788] Q What was the talk on the streets about whether or not blacks should trade with the white people?
A Said, the blacks better not trade with the whites.
Q Is that what they said on the streets?
A They said you couldn't go in there. It was boycotted.
Q Who said that?
A As I told you, Harry Gusta and I know another one was Walter Griffin. I know them two.

Q Why did they say you couldn't go in there?

[13789] A Said it was boycotted.

Q Who did they say was boycotting it?

A The whites.

Q Who did they say was boycotting the whites?

A Who did they say was boycotting them?

Q Yes.

A In—the NAACP, wasn't it?

Q The NAACP said—

A Something.

* * * *

Q Did anybody ever try to get you to join the NAACP?

A No, they just talked around. Said everybody ought to join it. I figured they had the wrong reasons was why I didn't join it.

Q Had the wrong what?

[13790] A Wrong reasons.

Q Who were their leaders?

A At that time Walter Griffin, Calvin Davis—Calvin Williams, and who else I don't know but I know they were on it.

Q Why did you think they were wrong?

A Well, they had the boycott on and Walter Griffin didn't want you to buy from a white filling station.

Q They didn't want you to buy gasoline from a white filling station?

A No.

Q Why not?

A Well, he bought it.

Q Who bought it?

A Walter Griffin.

Q But he didn't want you to?

A Didn't want me to, no.

Q Were you able to get materials to complete your job?

A Complete my job?

Q Yes.
A Yes, sir.
Q Did they try to keep you from getting the materials?
A No, sir. They said I'd better not go to no lumber company. I never did stop going.
Q Now who said that?
A It was folks on the street. I don't know who said it.
[13791] Q Did they tell you you'd better not go in—
A They spoke it in my presence.
Q And they were talking about you?
A I know they was.
Q Were they black people?
A Black people, yes, sir.
Q Did you know what would happen to you if you disobeyed them?
A Well, the fact about it, I didn't care at the time.
Q Did they make any threats to you?
A Not to me, no, sir.
Q Were you afraid?
A I was not. I was working for the white people.

• • • •

CROSS-EXAMINATION

BY MR. SANDERS:

Q Mr. Coleman, if I talk too softly for you to hear me, just speak out now.
A I will.
Q I want to go back to this Christmas day, 1966.
A How's that?
Q I want to back to the Christmas day on 1966?
A I see.
[13792] Q I want you to tell me a little bit more about what happened by answering some questions for me, all right?
A I will. I'll tell you what I know about it.

Q You will tell what you know?

A I'll tell you what I know.

Q You've taken an oath to tell the truth?

A Absolutely.

Q About what time in the morning did you get up and find that your truck had four flats on it?

A It was just about daylight.

Q Very—

A I wasn't at home.

Q Where were you?

A At Brisco Brown's house.

Q Had you spent the night at Brisco Brown's house?

A Well, we were sitting up there playing poker that night. And we played poker to broad open daytime, and I went out and my tires were flat.

Q Oh, you were in a poker game?

A I was in a poker game, yes.

Q So the truck wasn't at your house at all?

A Wasn't at my house.

Q Did you win or lose that night?

A Well, I don't know.

Q Did you win the money?

A I said, I don't know.

Q You don't remember whether you won or lost?

A I don't remember whether I won or lost.

[13793] Q And how many fellows were involved in this poker game?

A I don't know how many it was.

Q Give me your best judgment as to how many fellows were in and out of that poker game?

A I could just say several, but how many I don't know.

Q Okay. Were they coming and going all night long?

A Not all night. Just certain ones would get up and go and some of them were sitting around in there waiting for a good hand.

Q What time did you go to Brisco Brown's house and play poker?

A I don't know.

Q Was it in the early part of the night?

A No, it was in the night, I know.

Q Would you say it was before twelve o'clock midnight?

A Might have been. I wouldn't say for sure.

Q And did you get into the game when you went in?

A Not when I first got in, no.

Q About how long did you have to wait to get in the game?

A Oh, about an hour or something like that.

Q Did you stay in the game continuously after you got in?

A After I got in.

[13794] Q Did you go outside at any time during the night?

A Not never a time until I got ready to come in.

Q Were you with anyone that night?

A No. No one was with me. I was by myself.

Q After your tires were cut, and you saw that they were cut, what did you do?

A Well, there wasn't nothing for me to do but walk to the filling station.

Q Did you get them repaired?

A I did.

Q Did you talk with any of the fellows that had been involved in the poker game about your tires being cut?

A Well, quite naturally, I suppose.

Q Did any of them know anything about the tires?

A Didn't know anything about them.

Q Did anyone there tell you what had happened or that they had any suspicions or anything on how it happened?

A No, they didn't.

Q Was Ike Turner in the poker game?

A Oh, no.

Q When did you see Ike Turner?

A Oh, it might have been a week or two after that.

Q Where was he when you talked to him about your tires being cut?

A Up on the street, I guess was where it was.

[13795] Q Up on the street in downtown Port Gibson?

A In Port Gibson.

Q How did this conversation happen to come up between you and Ike Turner?

A I just told him about my tires.

Q Well, describe what happened? You met him and just told him that you had had all four of your—was it four tires or five?

A Four.

Q Your spare was not cut?

A No.

Q How did this conversation go between you and Ike Turner?

A Well, he was surprised when I told him about it.

Q And what did he say to you?

A He didn't say nothing at first. He said he was sorry of it.

Q How long did this conversation last there on the street?

A It didn't last too long, I don't guess. Just as a friend would be, you know.

Q Did Ike Turner tell you your tires had been cut because you had gone in the liquour store?

A After—lately he told me that.

Q When you say lately, when was that?

A Oh, it might have been two or three weeks after that after it happened. It might have been a month afterwards. I don't know.

[13796] Q Now this conversation that you had with Ike up on the street in Port Gibson, this was not the same conversation when he told you your tires had been cut because you had been in the liquour store?

A Well, when I told him my tires were cut, then lately he told me that someone said I went in the liquour store. That's why they cut the tires.

Q Oh, I see. Let me see if I understand you now. You said you told him about it, right?

A About my tires being cut?

Q Uh-huh. And then y'all parted company? And he came back later and told you that he had heard that?

A Uh-huh.

Q Did he tell you where he had heard it?

A No, he didn't tell me.

Q Did he ever tell you who told him that?

A He never would tell me who told him.

Q Did you ask him?

A I asked him.

Q He wouldn't tell you?

A He wouldn't tell me.

Q Is Ike Turner a friend of yours?

A Yes, sir.

Q Do you think Ike Turner cut them?

A I don't believe he did.

Q Now you said that you had not gone in the liquour store?

A I had not.

Q Did you trade with any merchants other than [13797] the Port Gibson Lumber Company during the boycott?

A That's where I bought all my lumber materials.

Q What about your groceries?

A I got some groceries from Piggly-Wiggly.

Q Uh-huh.

A I didn't get all of them there. I got some of them where I wanted.

Q Now did anybody other than Harry Gusta ever tell you not to trade with Piggly-Wiggly?

A Some persons with no names told me not to go in the white stores.

Q Were they talking to you? Jasper Coleman, when they said that to you?

A They were talking in a group. I was in the presence. They didn't personalize my name, you see.

Q Nobody said, "Jasper Coleman, you'd better not go in there."

A No, they didn't tell me that.

Q Were they saying no black people ought to go in the stores?

A You'd better not go in there. No black people allowed in there. You'd better not go in there.

Q When they say you, do they mean black people?

A That's what they meant.

Q Do you remember the names of any of these people that said you should go—

A I remember the names of two of them.

Q Is that Harry Gusta and—

A And Walter Griffin.

[13798] Q You said Walter Griffin would go in the stores himself, didn't you?

A He bought gas from a white station.

Q You just disregarded what he said because he wasn't preaching what he—practicing what he was—

A Right.

Q Did Harry Gusta ever threaten you?

A Never did. I haven't ever been threatened by no one, I don't think.

Q And has anybody ever threatened you with bodily harm about trading where you wanted to?

A What?

Q Has anybody ever threatened to harm you or hurt you by trading where you wanted to?

A Ain't nobody ever said nothing to me.

Q Now this conversation down at the barber shop, was this conversation with all the people in there?

A It was just talking floor talk there.

Q Just floor talk?

A Uh-huh.

Q It wasn't just somebody speaking to you, Jasper Coleman?

A I don't think it was.

Q Was it general talk around the community that black people should not go to any—the NAACP didn't want black people to go in the white stores?

A It was general talk.

Q These conversations that you had with Harry Gusta and Ike Turner and down at the barber shop, were these [13799] general conversations in the community?

A No, it wasn't no general conversation. That was between me and Ike because there was Ike and me and didn't nobody else know but me and Ike unless he told someone.

Q So your conversation with you and Ike was between you and Ike?

A Between me and Ike. But the rest of them were just out in the public.

Q Just street talk?

A That's right.

* * * *

[13803] Q Do you know anybody that has ever worked for Head Start?

A Yeah, I know one man that used to work for them.

Q Who's that?

A I reckon it's Head Start—Calvin Williams.

Q All right. Do you know when he started working for them?

A No, sir, I don't know.

Q You mentioned him as being one of the leaders of the NAACP?

A He was at one time.

Q You didn't approve of him as a leader?

A No, sir, I did not.

[13804] Q And that's why you didn't join?

A I just didn't have no mind to join because they said you couldn't work for the white folks. And you'd better not do this and you'd better not do that. And the white folks gives me all the work I was doing. Why would I want to join to cut my salary off.

Q This was when you were a carpenter?

A Yes, sir.

Q When did you stop being a carpenter?

A Oh, back in—I couldn't tell you. Back in the thirties.

Q Back in the thirties?

A Yes, sir.

Q Well, the employment you're talking about with the white people, is that carpenter work—is that what you're talking about?

A That's carpenter work, yes, sir.

* * * *

[Witness Marvin Hynum]

[DIRECT EXAMINATION]

* * * *

[13805] Q Where do you work right now?

A Parks Lumber Company in Port Gibson.

Q How long have you been at Parks Lumber Company?

A A little over one year.

Q Before you worked for Parks, were you employed by Sheriff Dan McCay in the Borden Milk operation?

A Yes, sir.

Q When were you employed by Sheriff Dan McCay?

[13806] A Well, it was—I started working for him, I guess, about April of '69.

Q What work were you doing while you were working for him?

A Well, I was driving his milk truck for him, and of course, taking care of all the orders and delivering all his milk.

Q Did you have a helper on the truck with you?

A Yes, sir.

Q What was his name?

A Johnny Shorter.

Q For the purpose of the record, Mr. Hynum, what is your race?

A Caucasian.

Q White?

A White.

Q And for the record also what is Johnny Shorter's race?

A He's Negro.

Q Member of the colored race?

A Member of the colored race.

* * * *

[13807] Q Tell the Court what occurred at Addison High School when you attempted to make a delivery there and there was an incident involving some damage to your truck?

A Well, it was—I guess, it was about in June—was about when it was.

BY THE COURT:

What year was this?

A Of '69. Johnny—it was just a normal day. We always would make our route to Addison at a time when they are in class. We try not to be over there ever in recess because, you know, it's just a lot more convenient for us. This particular day we drove up, and it was like any other particular day. I go inside and start filling the order, checking the boxes and making sure none of our

milk is sour. If any of it is, we replace it, of course. While Johnny starts getting all the milk out of the truck and getting it ready to bring it inside because it's always usually a standard order. But this particular day while I was inside, Johnny did come inside and told me there was a lot of people [13808] gathering up out there. So I went back out there and looked, and there was—I don't know, at that time there wasn't but about twenty or thirty out there. But they were still coming around the corners of the building. Just more and more people coming from everywhere.

Q What sort of people were these? What race of people were these?

A Black students. They were just coming all around the building there. So I asked the ladies there—the cooks—the dieticians—I asked them, what were they doing out of class. And they said, "They're not out of class." We thought maybe they had part of the day off or something. Finally Johnny came inside and told me, "Man, they're really hollering and getting it out there." I went back out there and was standing at the door. I didn't go outside. And they were—there were a lot of them hollering and just getting pretty rowdy out there. And it was obvious to me then that they were around there just because we were there. And unloading the milk—they were hollering things like, "Don't unload the milk, because we ain't going to drink it."

Q What else did they holler and say?

A At that time they didn't do anything. This lasted—well, we were there over two hours. And the longer we stayed there—see, at that time they were just hollering, "Don't unload the milk, because we ain't going to drink it." Well, we didn't care whether they drank the milk or not. We were just doing our job of unloading it. We had an obligation to unload the milk. And so we—after Johnny asked me what to do, I told him, "Well, we're going to have to unload [13809] the milk. That's all we can do. It's just do our job and unload the milk and get

out of here." So when Johnny started going ahead and bringing it on—he told me to just stay inside. He said, "You stay inside. I'll go get the milk." I always go out there and help him once I got the order filled out and the ticket signed. So Johnny told me, "You stay in here." And so that was fine with me. I didn't want to go out there anyway.

Q Were you afraid?

A Yes, sir. I was scared to death.

Q What was so frightening to you?

A Well, when I really started kind of getting scared was when Johnny started—went back outside and started bringing the milk in. The crowd got a lot rowdier than they had been when they were just hollering, "Don't take it in." And when they saw that we were definitely going to take the milk inside. And the whole atmosphere out there became pretty rowdy, and they started hollering things like, "You white SOB." You know, "don't take that milk in."

Q Did you hear them say that?

A Yes, sir, I went to the screen door looking at them. And they could see me. And so as I got to looking around, I was the only white SOB standing around there. And so that's when I started getting kind of scared. So anyway I started looking for a phone then because, you know, we definitely had—I was going to call Dan McCay, the Sheriff, to tell him about what was happening there. And I told Johnny, "You hurry up and get that milk in here." They didn't have a phone. They didn't have a phone anywhere in the [13810] building I was in. I figured out I would have to go outside to get to a phone over in the office. So I went back and got with Johnny over there, and he was still trying to bring the milk in when I went up to the door again to go back and see how Johnny was doing. It was when they were all up in the truck and on the dock and everything else then. And they—

Q They were inside the truck?

A Inside the truck, yes, sir.

Q Is that where the milk was kept?

A The milk was inside, up front, in the cab part and inside where the milk was kept. But now when Johnny would go out there, they would all run and get out of the way except just a few of them. One boy in particular was a kind of heavy set boy. I don't know what his name was—his first name was but I do know him—I do know his father. His father is Johnny Moore.

Q Johnny Moore?

A Johnny Moore, and I don't know his name. I guess he's a Moore too.

Q Is the boy in school or do you know?

A Then—I didn't know then. Since then, I've found out that he wasn't. Then I didn't know whether he was a student or not. I didn't know him personally. He kept getting in Johnny's way when Johnny would—Johnny would always bring in about five big stacks of milk at a time which is a pretty good load for Johnny on his two little wheel cart. And Johnny was bringing one of the big stacks back, and the boy would kind of get in front of him. And [13811] Johnny would roll it on in. It was beginning to get to Johnny. I guess he was pretty scared too. I don't know.

BY MR. CARTER:

I'll object to that, Your Honor.

BY THE COURT:

Objection is sustained.

BY MR. CARTER:

Move to be stricken.

BY THE COURT:

Motion is sustained.

A Johnny would lean the cartons of milk back to roll it inside, and the big boy would just kind of stand in front of him. He appeared to be keeping him from com-

ing inside. He wasn't putting his hands on Johnny in anyway. Johnny would roll them back inside, and finally just push his way on through and come inside. And Johnny told me that he—

BY MR. CARTER:

Objection, Your Honor.

BY THE COURT:

Wait just a moment.

BY MR. CARTER:

To what Johnny said.

BY THE COURT:

The objection is sustained.

Q You can't testify to what Johnny told you. You can testify to what you saw and what other people out there may have said in the yelling and that sort of thing.

A This happened two or three times. He had maybe [13812] five of these big stacks. It happened like three times. He would lean it back, and he would get in his way. And so finally Johnny leaned his milk back down and it scared me to death because I thought he was going to jump on him and fight him. And that's what I really didn't want to happen, because Johnny was the only one—if that happened, I couldn't go out there and do anything. I don't know whether I would have or not.

Q How big—

A I'm glad it didn't happen. But anyway Johnny didn't—

Q Wait just a minute now. How tall are you?

A Five five.

Q How much do you weigh?

A Now I weigh 180 lbs.

Q What did you weigh then?

A Then I weighed about 155.

Q Johnny's a pretty big man, isn't he?

A Yes, sir. He was a pretty big fellow.

Q How tall is Johnny?

A I'd say he should be about six three, six five. I don't know how tall.

Q He was a pretty big physical man?

A Right.

Q Go ahead.

A Anyway, Johnny leaned that down and he just didn't—he didn't put his hands on the big fellow at all. He just walked right up to him in his face and told him, "if you don't get out of my way, I'm going to choke the life out of [13813] you." He said, "Don't trip me. I'm just trying to do my job." He just tried to explain it to him. I don't know what all. He just told him right quick, "You just get out of my way. I'm just trying to get this milk delivered." He picked the milk back up, and we went ahead and unloaded our milk. Finally we got it inside, and we went on back outside to leave then. We were just ready to get on out of there. I had heard the air coming out of the tires. Johnny had been outside and checked, and sure enough we did have one of the tires had gone flat on us. So we said, we'll come out of here anyway just like it is. So we went out there and jumped in the truck and wasn't any keys in the truck.

Q Had you left the keys there?

A Yes, sir, I had left the keys in the truck. In fact, when I drove up there, there wasn't anybody out there. None of this was going on. So we went back inside, and I then decided I had to call somebody. And there were no grownups out there. There were no teachers, nobody at all that I could—I tried to get the women in there, you know, "Y'all do something to try to get them away from our truck." It didn't do any good at all. I just decided I had to go get the keys, so I went ahead and gritted my teeth and went over to the office.

Q Did you go through the crowd?

A No, sir, I didn't go through the crowd. The crowd was in the back of the cafeteria. I went out the side door. It was a lot of blacks around there but they weren't particular interested in me particular interested in me [sic] until they actually saw me come out there, but they still didn't—I went on over into the office over there. And of course, I [13814] asked them why wasn't some of them out there getting them out of my truck. I told them they had done got my keys, cut my tires and everything else. And I asked them why they weren't doing something. And I never could really get any kind of answer out of them at all. They were just kind of studdering around and saying they were going to do something and we're going to stop them. And I said, "I'm fixing to call the Sheriff," and they said, "No, don't call the Sheriff. We're going to straighten this out. We're going to get you out of here." So I just went ahead and walked on around behind the counter and picked up the phone. I called Dan.

Q Called who?

A Dan McCay, the Sheriff. And told him the situation out there. And he told me that he—I don't know whether I should tell you what he told me or not. Anyway he told me, he said, "I can't come over there." They were hollering—when I started leaving, they were partly hollering too to go get Dan. "Bring Dan over here."

Q Who did you understand Dan to be?

Q Dan McCay, the Sheriff.

Q Was he also the owner of the Borden Milk route?

A Yes, sir, he owned the franchise—the Borden's franchise. So they wanted Dan over there, and I told him, "Listen, Dan, they want you over here. Why don't you come over here and get me out of here. You're the one they want. They don't want me." And he told me, "If I did, he'd have to shut the whole school down probably," you know, to get it all straightened out. He said he didn't want to do that. He [13815] said, "First, I'm going to call Sullivan."

Q Who is Sullivan?

A C. V. Sullivan, the superintendent of education at that time.

Q Was the principal of the school there at all during this time?

A Well, I don't know the principal of the school, so I don't know whether he was there or not. There were some men in—when I went over to the office, there were men and women and all in there. There should have been a lot of teachers somewhere because they didn't have enough students in class. So he said that he was going to call the superintendent of education and get him over there to see if he couldn't get over there and get it straightened out. He said, "Then if they can't get it straightened out over there, then I'll have to come over there." He said, "You stay in the office. Don't you go back out there." I told him that Johnny was still out there, and he said, "Don't worry about Johnny. He'll be all right." He said, "You stay there." So C. V. Sullivan did come out there. He came to the office where I was. And he told me to come on out there and talk to them.

Q Is C. V. Sullivan a white man or colored man?

A White man. And of course, I didn't want to go out there with him. He told me to come on back over here where your truck is, and I'll get this thing straightened out and get your keys and you can go on and leave and get out of here. So I went on with him, and when we walked on back over there inside the cafeteria and right on out the [13816] back door out there. And when I stopped up on the dock there, he just walked right on out there in the middle of all of them, and they were all still out there. They got right in his face. They just told him he was a white SOB.

Q Did you hear that?

A Yes. I—he wasn't standing ten feet from me. And so they just hollered at him and everything and him trying to talk to them and trying to tell them to go home. "You don't have to go back to class, but just go somewhere. You don't belong here. You belong in class.

Either go to class or go home." Then he wasn't getting anything done. They weren't listening to him at all. They were just standing up in his face and hollering at him. And finally there was—well, there was a couple of men out there—black men came out there. And I took it that one of them was the principal, but like I said, I don't know who the principal was. But anyway, a couple of black men did come on out there and they talked to them and they just talked to them and told them how ashamed they was and what in the world were they thinking about and what were they doing there. And finally when they came out there and started talking, they just calmed right on down. They told them—they kind of backed away and everything and Dan had called Carl Boyd service station where we always have our truck worked on, and told them to send some people out there to—see, I had told Dan we didn't have no keys and we had a flat tire. After they got kind of calmed down, the service truck came on in there in a hurry and they were scared to death. And they straight wired our truck—just jumped it over or something. I don't know exactly [13817] what they did.

Q Did they repair your tires at the same time?

A No, sir, we come out of there with a flat. Once they got it cranked, we left. We just drove on out.

Q Is that a refrigerated truck or just a regular truck?

A It's the kind that you close and overnights freezes and then you just—the things stay frozen all day long.

Q You did get out of there with the help of a service station attendant?

A Yes, sir.

Q I show you a picture that has been identified as Exhibit C-12 and ask you if you recognize that individual there or the truck or does that bring back any memories or anything to you?

A Yeah, it does. This looks like my milk truck right there here on the left side, and this fellow right here is that fellow, Johnny Moore's son.

Q The one that was actively engaged in helping to try to stop Johnny?

A That's the big fat boy.

Q You definitely recognize that as the man who tried to stop you from delivering the milk?

A Yes, sir.

Q How long did you work for Sheriff McCay after this?

A A couple of days. See, what happened, my milk business just dropped in a hurry then. That same day that this happened—that we left this black school, we had [13818] another black school. We had the elementary black school out at Pattison, Mississippi. That's a little town about seven miles from Port Gibson. So when we drove out there,—when we drove up, one of the teachers came out and told us not to put out any milk because they weren't going to drink it. She said the kids just weren't going to drink it. We told them—we tried to explain to her we were just doing out [sic] job; we've got to put it out because we're under contract with these people, you know, to put milk out in these schools. And the Borden Company demands that we leave milk here. I said, "If y'all don't drink it, that's fine. If it spoils, we'll even have to come out here and replace it with fresh milk but we've just got to keep fresh milk out here." And they told us, "No, we're not going to let you put it here."

Q Who was this teacher; do you know?

A I don't know her either.

Q Was she a black teacher or a white teacher?

A Black. And so, I don't remember whether we put milk out there or not. I don't think we did. We finally just went ahead and left. When I came out from talking to her a little—little kids were all hand in hand—I guess about six of them dancing around our truck when we came back out. And they were singing songs like, "We ain't going to drink your milk because it's sour," and all this stuff and dancing around our truck.

Q Was the milk sour?

A No, sir.

Q Did you keep fresh milk there at all times?

A Every day. We always picked our milk up [13819] every morning. Any milk left in the truck is—don't costs us anything to give it back to the Borden Company because they make it good to us too. All our stores that we went to that day—all our black stores—but all our black stores that we went to that day—all of them told us not to come back anymore. And we told them, "What about the milk in your box?" And all of them said, "Well, just don't worry about it." Some of them said they had thrown it away. I had been willing to take it back and swap if it was spoiled or anything. Like I said, it didn't cost me anything to do that.

Q Did they say why they didn't want you to bring milk back?

A No, sir. What they did tell me was they did appreciate me not even parking in front of their store anymore. They said don't even come by and ask us anymore.

* * * *

[CROSS-EXAMINATION]

* * * *

[13824] Q Now at one point you said there weren't any adults out there.

A Right.

Q And then you later said that everybody was apparently big. Did you mean that they were just big high school kids?

A Right, they were just big high school kids.

Q There wasn't any adult leadership out there?

A Well, there were some what you called leaders out there that were doing most of the hollering—just some big guys up on the dock was one of the ones doing most of the hollering and all. And he was pretty big. Then I didn't know whether he was high school students, whether he belonged there or not. I didn't know who belonged there and who didn't.

Q But could you gather from the reaction of these students whether or not this was kind of a spontaneous thing?

A I really don't know. The way it was for a while there, it was like they were just kind of on recess and they were having a good time and standing around, like I say. And they were just hollering at us and just having fun with us, at first it seemed like—telling us, "Don't unload the milk because we ain't going to drink it." And we actually started unloading the milk is when the crowd turned a lot rougher. And all of them wasn't taking part in it. Like I say, even from the first it was just a few of them were taking [13825] part in it. And once a few of them started, then right there at the last when we started unloading the milk, they just all started raising cain.

* * * *

Q All the times that you have been delivering this milk from April to June, had this ever occurred before?

A No, sir.

* * * *

[Witness Johnny Shorter]

[DIRECT EXAMINATION]

* * * *

[13835] About how many students were there when you first started getting the milk out of the truck?

A Oh, it was a few, and then it started getting bigger.

Q How many is a few?

A About—few. It wounded up like two hundred or more, I expect.

Q When it first started out, was it maybe ten or fifteen?

A Yeah, something like that and it kept getting bigger and bigger.

Q Was anybody doing any cursing?

A Cursing.

Q Were they cursing you?
A Cursing Mr. Hynum.
Q What were they calling Mr. Hynum?
A Something dirty.
Q Did they call him white SB [sic]?
A Yes, sir.
Q Were these students little children or teenagers or—
A They were all sizes—teenagers, small ones.

* * * *

[13836] Q What else happened?
A They blocked the door, and I just kept rolling them in there, and I'd come out and get some more. They kept doing it, so—
Q How many were blocking the door?
A Oh, it was a bunch of kids around there up on the dock.
Q Were there any grownup people out there that weren't students?
A There was one there I know.
Q Who is he?
A I don't know his first name. I know his last name was Moore.
Q Moore?
A Yes.
Q Sort of a heavy set fellow?
A Yes, sir.
Q How old was he then?
A I really don't know, but I know he had been in the service and come out.
Q He was a grown man, wasn't he?
A Yes.
[13837] Q About how long had you known this fellow?
A I've known him practically all my life.
Q What's his daddy's name?
A Johnny Moore.
Q Do you know his mother's name?
A Yes, sir.

Q What's her name?
A Kathleen?
Q Kathleen?
A Yes.
Q Do you know whether he worked out there for the schools?
A As far as I know, he didn't.
Q Do you know what he was doing out there?
A Sure don't.
Q Where was he working?
A I really don't know where he was working during that time.
Q How long had he been out of the service?
A Three or four months, I'd say.
Q What did he say to you, if anything?
A He said he wasn't going to drink the milk.
Q Huh?
A He said they weren't going to drink the milk. So I didn't say anything to him. I just kept doing what I was doing and that's all.
Q About how big a man is he?
A He weighed 250 or 260, something like that.

• • • •

[13840] Q Did anything happen to the truck?
A They punctured the tire.
Q Punctured the tire?
A Yes.
Q Which tire did they puncture?
A The back.
Q Was that a big—
A A big tire.
Q Is that a pretty good size—what you call a bobtail van?
A Yeah, something.
Q After the crowd got quieted down, did they disburse?
A They finally moved on out.

• • • •

[13847] Q Do you know why the students out at Addison were mad at Mr. Hynum? Do you know why—I guess they were mad at you too, weren't they?

A I don't know.

Q They were cursing him?

A They were cursing him.

Q Did they say anything about Sheriff McCay—that they had some grudge against him?

A They had a grudge against him.

Q Were they asking for Mr. McCay to come out there too?

A That's what they were yelling about.

Q What were they yelling about Sheriff McCay?

A About go get him or send for him or something.

Q They wanted Sheriff McCay?

A That's what they were saying.

Q Do you know why they wanted him to come out there?

A No.

Q Do you know whether they were mad at Sheriff McCay and Mr. Hynum because they were white or for what reason?

A I don't know.

• • • •

[CROSS-EXAMINATION]

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[13859] Q During the time that you worked for Dan McKay, did anybody ever threaten you?

A Didn't anybody ever threaten me.

• • • •

[Witness Emerson Davis]

[DIRECT EXAMINATION]

• • • •

[13867] Q Some of the blacks called you uncle tom?

A That's all that would do it was the blacks.

[13868] Q Before you refused to go along with the boycott, did they call you uncle tom?

A That's right.

Q Before that, did they call you—

A Before that and after that too.

Q Did they always call you uncle tom?

A That's right.

Q Why is that?

A All I can say is that I was going in the stores doing what I wanted to do, and they didn't want me to do it.

Q Do you know Jimmy Ellis?

A I reckon I do.

Q Tell the Court what Jimmy Ellis and Rudolph Shields and the two other people did to you?

A They grabbed me and beat me up and took a gun off of me, took a dollar and a pocketknife too.

Q Did you remember about when that was?

A No, but it was on a Monday morning.

Q Was that the same year that the boycotted started?

A Same year, but it was kind of in the fall of the year like in hay gathering time. I was down there to see William Thomas about hauling some hay for Mr. Robert Hynum, and I had my back turned towards the street and that gave them a chance to slip across and grab me all at once.

Q Who grabbed you?

A Shields first grabbed a whole of me. Then the Ellis boy come and got me from behind around the waist [13689] and carried me right on back down, and that's all I could do. One had my—each one had a whole of me—all four of them. One at my waist, one had my leg and one had a side.

Q You recognized Jimmy Ellis and Rudolph Shields. Did you recognize the other two?

A I would might know them if I would see them. They were lighter than Jimmy Ellis and Shields. It was two light fellows and two smaller fellows.

Q Where did they carry you?

A Right down on the streets on the corner of Nigger street they call it. I don't know the name of the street.

Q Is that a street in Port Gibson?

A In Port Gibson.

Q What did they do to you when they attacked?

A Shields kicked me twice. The other boy just helped them and took my gun and knife and dollar.

Q Did you ever get your gun and dollar and knife?

A Never get anything.

Q Did they say anything to you when they were attacking you?

A Shields said I was trying to break up his damn boycott. That's all he said. The other boys didn't say any words. Shields is the one that did the talking.

Q Now tell the Court again what Shields said?

A Said I was trying to break up his damn boycott.

Q Well, did you say anything about it?

A No, I didn't say a thing about it.

Q Did you report this incident?

A I reported it when it was first done. I started [13870] to the Sheriff, and I met two road patrol. I don't know who they was. They carried me on back down there to try to catch up with the boys. Then they called the Sheriff afterwards.

Q Now on this occasion where they followed you down to Mr. Rollins, do you recognize anyone who was following you on that occasion?

A Shields started to get out at the red light, and come over there and grab me and pulled me out of the car and I had my shotgun and he wouldn't get out. He put his foot on the ground when he put it back in the car. And then he got behind and said he was going to get me. And so he did that following—that following Monday is when they grabbed me.

Q Did you ever see any black people on the streets with walkie talkies?

A Oh, yes, I seen them quite often.

Q What did—did you hear them saying anything to each other?

A No, sir, I didn't hear them. I could just see them having a walkie talkie, but I wouldn't know what they would be saying.

Q Did you see any persons on the streets wearing black hats?

A I seen a plenty of them.

Q Do you know Bernard Gusta?

A Yes, sir, I know him well.

Q Did you ever have any difficulty with Bernard Gusta?

[13871] A Oh, he told me once to stay out of Mrs. Rosa Lee's store and then never said no more to me.

Q Who is Mrs. Rosa Lee?

A Mrs. Rosa Lee Ellis.

Q Did he say why he wanted you to stay out of the Mrs. Rosa Lee Ellis' store?

A He told me I knowed it was boycotted, and I had no business in there.

Q Did you stay out?

A No, sir, I did not.

Q Do you know a black man by the name of Plutie?

A Yes, sir.

Q Did you ever have any problems with Plutie?

A No, sir, I didn't have no problem with him.

Q Did he ever—did you ever see him around with Shields, Bernard Gusta?

A Plutie had his own crew. They were all up on the streets that Saturday. There were about three deep and in five or six different places. And when Mr. Jones and Mr. McFatter, and I can't call that little ole boy's name,—He's Guthrie Davis' grandson—they all had a round up there, and I walked over to see what was the matter. So many folks were standing around. And I asked what was the trouble, and James Fuller told me it was nigger business and wasn't no white folks business. I told him it was anybody's business when they blocked the streets. They didn't have no business blockading the sidewalk.

Q Well, did you see any black people block any of the sidewalks?

[13872] A That's all they were doing—black folks. They only way to get around was get out in the streets and go around.

Q Why were they blocking the sidewalks; do you know?

A I don't understand it. I had shoot one the same evening.

Q Who did you shoot that evening?

A William Holmes' boy.

Q What did William Holmes' boy—

A He started on me with a knife. Shields sent him up there to grab me and hold me until they get there. He was standing on the corner of Frishman's.

Q Standing on the corner by Frishman's Store?

A Frishman's Store. That's where Shields was standing. And I was out there at People's store.

Q Is that on the street in Port Gibson?

A Right on Main Street.

Q What did Holmes do to you on that day?

A He started on with me with a knife, and I told him to get back. And he didn't do it and I shot him. I just graised him in the side, and he went on upstairs and fell. He told the police he fell to keep me from shooting him anymore.

• • • •

[13873] Q Do you know Calvin Bailey?

A Yes, sir, I know him.

Q Did you ever have any difficulty with Calvin Bailey?

A No, sir, Calvin never did bother with me.

Q Did you ever see him around on the—

A He walked the streets all day long. That's his job.

[13874] Q What kind of job did he have?

A He was supposed to watch the stores. Keep them out of the stores. He was a Black Hat man. He was supposed to beat them up.

• • • •

[13875] Q Do you have an automobile?

A Yes.

Q Did you have one in June or July of 1966?

A Yes, sir, I had a station wagon.

Q Did anything unusual happen to that station wagon during that time?

A Yes, they broke a windshield all out of it and I don't know but they must have put Elmer's dust in it or something. It grinded the motor all up in it. It wasn't sugar.

Q Has that ever happened to you before?

A No, sir, it ain't never happened.

Q Hasn't happened to you since?

A No, sir.

Q Do you know a man by the name of Will Parker?

A Yes, sir, I started working for him.

Q Is Will Parker black or white?

A He's black. I started to work for him repairing his house—his gallery and Collins called him and told him to get rid of me. If he didn't, he'd burn his house down.

Q Did they get rid of you?

A Yes, sir. I had to leave.

* * * *

[13877] Q Do you know a man by the name of James Bailey?

A Yes, sir, I know him.

Q Did you ever have any difficulty with James Bailey during the period of the boycott?

A Yes, sir, I had trouble out of him. He wanted to kill me one evening.

Q Tell the Court about the circumstances of James Bailey's problems with you?

A Well, I was coming from work—me and my boy one evening. He was there in front of me. And I drove by and passed by and went on up the hill. When I stopped at the red light, well, he drove on around me and commenced to cussing me about what he was going to do to me. And I told him, "No, I wasn't hunting no trouble.

I didn't want to hurt him, and I wasn't going to let him hurt me."

Q Why was he cussing you?

A Because I pulled out in front of him. He was a civil rights worker, and he wanted to get up a rowl. He didn't know how to start it.

Q What did he say to you?

A Oh, he cussed me a lot, and told me I ought to blow my damn brains out. First one thing and another like that. I just drove on off and got the policeman for him.

* * * *

[13905] Q Did you ever have any difficulty with James Bailey?

A Oh, man, yes.

Q Tell the Court what difficulty you had with James Bailey? What did he do to you?

A Well, I had to put the law on him. He was talking about killing me.

Q Why was he going to kill you?

A Well, I pulled in front of him and come on and wouldn't wait there until he got ready to move. That's all. He drove right in front of me and stopped, and I pulled on around him and kept a going.

Q What did he do then?

A He come on back and got in front of me and I got up on top of the hill by Rosa Lee's store.

BY MR. SANDERS:

I hate to cut it off here but I think we've already heard this.

BY THE COURT:

I think we've heard this testimony, Mr. Pyles.

BY MR. PYLES:

I agree.

Q Is that the only problem you've ever had with him?
[13906] A That's the only one.

* * * *

[CROSS-EXAMINATION]

* * * *

[13923] Q You also testified that they broke the window on your station wagon?

A On what?

Q On your station wagon?

A Somebody—I didn't say who done it. I was sitting at my house. It was at night. It was three of them because they knocked three holes in the windshield all at the same time and the concrete fell upon my porch.

Q There was three of them?

A Because one man couldn't have thrown them three rocks all at the one shot and got out of the way that quick. They knocked it plum out. I don't know who they was. It was at night, and I never did get a chance to see them.

Q You reported it to the Sheriff?

A No, I did not report it to the Sheriff. I reported it to the policeman.

Q Was Mr. Porter the police chief there?

A Mr. Doyle.

Q Mr. who?

A Mr. Doyle.

[13924] Q Did anybody get arrested?

A No, because they didn't know who to arrest. I couldn't see who it was. I didn't know who it was.

Q Did anybody get arrested when the five men jumped on you and beat you up?

A Shields got arrested.

Q Do you know what happened? Was he convicted? Did they try him; put him in jail?

A Yeah, they put him in jail. Yeah, they put him in jail.

Q Did you testify at his trial?

A Sure I did.

Q How much time did he do?
A What?
Q How much time did he get?
A I don't know.
Q When Bailey and you got in an argument, did the police come then?
A That's right.
Q Did he get arrested?
A Sure he got arrested.
Q What for?
A For meddling with me and I reported it to them.
Q You did what?
A I reported it to the police. I went and got the police for him.
Q Did they put him in jail because he—

BY MR. PYLES:

I'm going to object to that—the form [13925] of that question. Every public official is presumed to do his duty.

BY THE COURT:

Well, not only that but every citizen has a right to make a complaint, Mr. Carter.

BY MR. CARTER.

I'm not questioning that, Your Honor.

Q Did he get arrested?

BY MR. PYLES:

I'm going to object to that as being repetitious. He testified he was arrested.

BY THE COURT:

Wait a minute.

Q Was he arrested?
A Yeah, I told you he was arrested and was tried too.

Q And you said there wasn't any fight? He was just cussing at you?

A That's right. He was talking about blowing my brains out, and my son was right there sitting and listening to him.

Q Mr. Davis, were you charged with shooting Mr. Holmes?

A Nope.

Q Were you arrested?

A Yep.

Q Did you make bond?

A Three hundred dollars I believe it was.

[13926] Q What happened?

A After Holmes said he had admitted it and starved himself, that's what happened. Holmes cleared me his own self.

Q What did he tell the judge or whoever it was?

A He told them he started it first.

Q How long have you known Alexander Collins?

A I don't know. A pretty good while. I know when he worked there at Bo Watson's shop. That's when I first knowed him.

Q Was that when you first came to Port Gibson?

A No, not when I first came to Port Gibson, I don't believe. It was up some time. I've been knowing him a pretty good while.

Q Did you know him when the NAACP started in Port Gibson?

A I knowed him before then.

Q Before then. Were you friends before that?

A Just as good as any you'd want to see.

Q What happened?

A He fell out with me. He fell out with me because I went into the white folks stores. That's what happened.

Q You worked for Will Parker too, you said. What did you do for—

A I started to work for Will Parker.

Q What did you do for Will Parker?

A I started some carpenter work.

Q Collins cut it out?

[13927] A He called Will Parker and told him to get rid of me. Now that's what Will Parker come out there and told me his own self after he answered the telephone. And Will Parker got up and walked to Collins Barber Shop and come back. I said, "Are you making it all right?" And he said, "No." He said, "Collins told me it'd be best if I'd get rid of you." And there are some man's in Port Gibson that will tell you the same thing. And Mr. Mance in Port Gibson will tell you the same thing. Mance Thompson will tell you the same thing because I got him to go—

Q Who's that?

A Mance Thompson.

Q Thompson? How do you spell that?

A He's named for another thing, but we call him Mance. He's named another name. I just can't think of it right now. Leon Thompson.

Q Leon Thompson?

A Yes.

Q Now you say Collins called your name out at the NAACP meeting?

A Called my name?

Q For violating the boycott?

A That's what they tell me. I wouldn't know. One of the various members told me.

Q What about this Kings you were living with?

A Said what?

Q You said you were living with Kings?

A I rent the house from Kings.

Q And they told you you had to leave?

[13928] A Yeah, they told me I had to leave.

Q Did they give you a reason for leaving?

A No.

Q How did you know it was Collins?

A King told me that he told these other folks that it was Collins that was making me move. He even told the police he was going to pay King the rent, and he said no. He didn't want me down there.

Q The police were going to pay the rent?

A I don't know what that police's name was. He was a policeman.

Q They were going to pay your rent for you?

A He told me if I owed them any rent he would pay it.

Q Did you owe him some money?

A No, I didn't owe him any money.

Q Why would he pay your rent?

A I said, the man said if I owed him any rent,—I went and told him I've got to move. I said, "I ain't got nowhere to move right now."

Q The man was going to pay your rent, and you don't even know his name?

A No, I don't know his name. So he told King that he would pay the rent if I owed him any rent. See, he said, "He don't owe me. I just don't need him down there."

Q That's what he told Porter? He didn't mention anything about Collins, did he?

A Not to me. I just can't hear everything, because there are some things they just ain't going to tell [13929] me. Just like Collins told my son-in-law. He wouldn't tell me, but he would tell my son-in-law.

BY MR. PYLES:

Your Honor, I object to the previous question. I don't believe he testified that the police paid his rent.

BY THE COURT:

I was a little bit confused on that. Suppose you try to unravel that a little bit. I'm confused too. Try to find out what he did say.

Q Did you say the police offered to pay your rent?

A They told King if they'd let me stay there, he would pay the rent if I didn't pay him. King said, "He don't

owe me nothing. I just don't want him down there." Do you get what I'm saying now?

Q Now will you tell me, please, why the police would pay your rent?

A There's a lot of folks that do things for me. What's wrong with that?

Q Here's a man you say you don't even know his name?

A I didn't know him, but he knowed me. But I didn't know him. Right now he speaks to me. I don't know him now. He stays up there by the crossroads.

Q Did you ever have an occasion to ask him for money on other occasions?

A I haven't asked him for none at all.

[13930] Q He just volunteered this?

A He told King—he didn't tell me this. He told King. I've been knowing a white fellow not long ago, he—just about three months ago. My motor was in the shop, and I was telling him that my motor was in the shop and I didn't have $50. He hauled off and let me have that $50. I didn't even ask him for it.

Q Is he a policeman?

A No, he wasn't no policeman, I don't think.

Q Mr. Davis, the altercation that you had with James Bailey after—did that have anything to do with the boycott?

A Uh-huh.

Q How?

A James Bailey is one of them black hat men. He was the—that spies for the store. And I did not hide from them. I went inside the store just like I go in there now, and like I've been going in there all my life. Because I figure I was paying for what I was getting, and there wasn't no reason for me slipping and sliding and telling them white folks stuff on the road like a lot of folks done.

Q Where did you hear the term black hat?

A Well, that's what they all call them down home, the black hats because they wear big old wide black hats. They call them black hat boys.

* * * *

[13931] Q Did you see any black hats?

A Now listen, if I'm going in the stores and you're hollering, "Don't go in there,"—I ain't got no business going in there, what are you doing? Are you watching or not?

Q I didn't ask you—I just asked you if there were any black hats in the picture?

A They ain't got their hats on. But they started [13932] at first and didn't have them. And then started wearing them black hats. They're still wearing them—some of them. No, they ain't go no black hats on there. But they sure wears them.

Q When did they start wearing the black hats?

A I don't know.

Q When did they quit?

A You go to town now and see if you don't see some of them wearing black hats now.

Q Is the boycott still going on?

A I don't know what's going on.

Q Well, the black hats didn't have anything to do with the boycott if they're still wearing black hats?

A That's because they're the bad men. I don't know what it was. They used to wear their hair all down under their feets. They wear it all under their feets. Now what's that for?

Q But to you that black hat has some significance? You didn't know what, but it had some significance?

A Not for me, because nothing makes no difference to me about what they do. As long as they don't bother me, they can wear whatever hat they want to wear.

Q It doesn't make any difference?

A It don't make any difference. As long as a person don't bother me, I ain't got no use for what he do.

* * * *

[13936] Q Did you go in the stores?

A I went in the stores.

Q What did you buy?

A I couldn't tell you what all I bought. I buy my groceries. I buy what I need.

Q Do you buy them all at one place?

A No, I did not. I don't ever buy all in one place. I may buy some in Vicksburg, some in Port Gibson or wherever I be.

Q When you would go to town, you saw them watching the stores. Would you go from one store to another or did you just go in one store and make a purchase?

A I go in any store I wanted to go in.

Q And sometimes that would be more than one?

A That's right. Sometimes it may be three or four I'd go into.

Q And would you buy anything other than groceries?

A Yeah.

Q Like what?

A Anything I wanted.

Q What did you want?

A I can't tell you what all I want. Just anything I wanted to buy, I bought it. Now that's all I can answer. If I see a hat I wanted, I bought it. If I see paints I want, I bought it.

Q Black hats?

A No. I don't wear them at all. Don't like no black hats. Never did.

Q When Bernard Gusta told you to stay out of [13937] Robert Lee Ellis' store, did he tell you—did he threaten you or did he just tell you——

A He told me I should know that store was boycotted, and I didn't have no business in there. That's what he told me.

Q What did you do?

A Went in there when I get ready.

Q Did you say anything to him?

A I told him I'd go in there when I'd get ready and wanted to.

Q And what did he say to that?
A He said, no more.
Q Just walked on off?
A No, I walked away from him.

* * * *

[13979] Q Who do you trade with for groceries?
A Rosa Lee—
Q Give the name of the store?
A Rosa Lee—I'm giving you the name of the store [13980] now. Piggly-Wiggly, and I trade there with Mr. Joe Ellis and Rosa Lee Abraham.
Q Do you trade with Claiborne Hardware Company?
A Yeah.
Q Still do?
A Yep.
Q On a cash or credit basis?
A On both, cash and credit.
Q How long have you been trading with Claiborne Hardware?
A Oh, about 20 or 25 or 30 years.
Q Do you do business with McDaniel Pharmacy?
A Yeah.
Q How long did you trade with them?
A Ever since I've been back in Port Gibson.
Q How long has that been?
A A year or two, I reckon.
Q Beg your pardon.
A About a year or two, I think.
Q You've been trading with McDaniel's Pharmacy about a year or two? Are you saying—you said that since McDaniel's been back in Port Gibson, not since you've been back; is that correct?
A Since he moved back in town, I've been trading with him since he opened up.
Q Did you trade with him before he left?
A Yep.
Q Do you do business with the Hudson Brothers?
A Uh-huh.

[13981] Q Do you do any business in their gift shop?

A Whose gift shop?

Q Hudson Brothers has a place called Hudson's Gift Shop in Port Gibson?

A I don't know nothing about the gift shop. All I do business with is up at the Hudson's Grocery Store.

Q You do business with—

A And Piggly Wiggly.

Q Do you do business with Waddy Abraham?

A Well, I trades there too.

Q That's Jitney-Jungle, is that right?

A That' right.

Q Do you trade with Louis Ellis?

A No.

Q Is he dead?

A I traded with Mr. Mike, but Mr. Mike's dead.

Q What business did Michael Ellis run?

A Dry good store.

Q Do you still trade in that store?

A No.

Q Why did you stop?

A I just stopped.

Q When did you stop?

A When Mr. Mike died.

Q Do you know Mr. Joe Ellis?

A Yep.

Q Do you trade with him?

A I trade there in his store. That's Mrs. Josephine Ellis' store.

[13982] Q That's whose store?

A Yeah.

Q Do you get your groceries from any particular store or do you get it from—

A Piggly-Wiggly. Piggly-Wiggly.

Q Do you trade mostly with Piggly-Wiggly?

A That's my main grocery store. Piggly-Wiggly is my grocery store.

Q Do you have credit there?

A Yeah, I 've got credit there.

Q Do you trade at business in Port Gibson called Abe's Betty Jean?

A No.

Q Are you familiar with it?

A Yeah.

Q Have you ever traded at Mack's Package Liquour Store?

A Don't got no business going in there.

Q Do you drink?

A Nope.

Q Do you trade with Ellis Variety Store?

A Ellis Variety Store?

Q Uh-huh.

A Don't know that store. You'll have to call it something else where I'll know.

Q Do you know Barbara Ellis? Do you know Norman Ellis?

A Oh—I don't trade in that store.

Q Do you trade at O. K. Cleaners?

A Uh-huh.

[13983] Q Do you trade at M & M Super Store?

A No, I don't trade there.

Q Have you ever used the washateria?

A Yeah, I use the washateria.

Q At the one near M & M?

A No, right there behind Jitney Jungle.

Q Do you trade with Port Gibson Lumber & Supply Company?

A Yeah.

Q Do you trade with Western Auto Associate Store?

A Yeah.

Q Do you trade at Auto-Lec?

A Yeah.

Q Do you trade at A & P Service & Parts Company?

A No.

Q Do you trade at Jones Five 'N Ten?

A Who?

Q Jones Five 'N Ten? They're out of business now?

A I used to when they were in business, but they ain't in no business now.

Q Do you trade with Allen Motor Company?

A Yes.

Q Do you trade with Donald Segrest Ford Corporation?

A Who?

Q Donald Ford Company down there?

A Yeah.

[13984] Q What kind of car do you drive?

A A '65 Chevrolet pickup.

Q Did you know Mrs. Edgar McCaa who had a business called the Town and Country?

A Who?

Q Edgar McCaa? Mrs. Edgar McCaa?

A No.

Q Do you know a business down there called Town and Country?

A No, I don't know no business.

Q Did you trade with all these merchants I just mentioned to you during the boycott? Those that you said that you do business with?

A Yeah, all of them pretty much.

Q Did anyone ever tell you to stay our [sic] of anyone of these particular stores?

A Yeah, I told you Bernard Gusta told me to stay out of Mrs. Rosa Lee's store.

Q Other than Bernard Gusta telling you to stay out of Mrs. Rosa Lee's store, did anybody else tell you to stay out of any of those other stores?

A No more than Shields.

Q Did Bernard Gusta ever block your path to keep you from going in a store?

A No.

Q He just told you—

A He just told me to stay out of those stores during the boycott.

Q I believe you testified that you told him [13985] you would trade where you wanted?

A That's the truth.

Q Did that happen more than once?

A No, he never bothered me no more.

Q When someone would tell you you shouldn't go in a store, is that what you call bothering you or having difficulty with?

A Yeah.

Q Why do you acquaint the black hat men with the NAACP?

A What do I which?

Q What do you think that the black—do you think that the black hat men and the NAACP are the same?

A I just did. Isn't the NAACP and the boycott all the same?

Q I asked you, do you think that the black hat men and the NAACP are the same?

A Yeah, I think they're all the same.

Q Why do you think they are—

A I just think that.

Q Give me some reason why you think that?

A Well—

Q Did anyone ever tell you they were all the same?

A No, but now the black hat men were going to beat me up, kick me around for going in the stores. Ain't that the NAACP people?

Q I don't know. That's what I'm asking you.

A That's what I'm asking you. That's what I [13986] think they is. I don't know, and that's all I can think about.

Q Mr. Davis, the procedure in court is that the lawyer is permitted to ask the questions of the witness, and the witness answers them.

A I'm answering it now.

Q I want to know why you think they were the same?

A I done told you. That's all I can think.

Q Tell me again?

A Because they want to beat me up because you go in the store.

Q You think that because they beat you—and you named about nine people that you said that you had some difficulty with. Now I'm talking about all the other members of the NAACP who didn't do no beating and knocking you up.

A They ain't bothered me. I told you that to start with.

Q So you're saying—

A Some of the NAACP people—you don't know what the NAACP people or not by the actions they do.

Q So you think—a lot of people down there you didn't have any difficulty with, right?

A That's right.

Q About nine people that you named—nine people that we have identified one way or another did bother you?

A That's right.

Q And you're saying that these people were the NAACP?

[13987] A That's right.

Q What about all those other people that you said that were members and you didn't know it or not?

A They didn't bother me.

Q So you're saying that anybody that bothered you were the ones you were talking about?

A That's what I'm talking about. I'm not talking about the rest of them.

Q How do you know the nine people that gave you difficulty were members of the NAACP?

A Just for me knowing it and looking on y'all's books and telling it, I don't know nothing about that. But now I goes by what the folks tell me. They said they were NAACP.

Q Looking on whose books?

A Where y'all kept the record.

Q What records have you seen?

A I ain't seen none of them.

Q Have you ever seen a membership list of the NAACP?

A No, I ain't seen it.

Q Have you ever been in the presence of other people who were discussing the membership of—

A Yeah, I've been there. Because my daughter and her sister would be talking about it.

Q Did they have a paper there with the names of everybody on it?

A I don't know. I don't reckon not. They didn't have—I don't know what they had on it.

[13988] Q How do you know Jimmy Ellis was a member of the NAACP?

A I don't know nobody is—Jimmy or nobody else. I'm just going by what I hear them say. That's all I can tell you.

Q Did you know that this was a NAACP boycott?

A Know the difference?

Q Did you know that this was a NAACP boycott?

A I—

Q Do you know?

A I don't know what it is. I'm just going by what I heard, and that's—as far as knowing it, I don't know.

Q Who did you hear—whose boycott did you hear that it is or was?

A Shields, Collins, Calvin, Charles Evers, I don't know who all.

Q Who did you hear that from?

A Just many number of people around on the street. Sitting around talking.

Q Did you ever hear that the boycott was a NAACP boycott?

A That's what they said brought it all on—NAACP. I don't know. I don't—I ain't no member, and I didn't follow that up. That's why I've got so much time.

Q What do you mean by you've got so much time?

A Cause I went on doing like I wanted to do.

Q Now do you know whether or not Jimmy Ellis was a member of the NAACP of your own knowledge?

A No, I don't know. I don't know because I ain't [13989] seen near a name on no paper.

Q Do you know whether James Bailey—

A I don't know now.

Q Do you know whether or not Charles Lipscomb was a member of the NAACP?

A I don't know now—Charles Evers or nobody else because I didn't see the name on the paper.

Q You said that Rudy Shields said several times that it was his boycott?

A That's right. He sure did say so when he kicked me in my side. I'm breaking up his damn boycott. That was his boycott.

Q Do you believe it when he says—

A Sure I believe him. That was his boycott. In other words now, I didn't hear him telling it until he come in there.

Q Did you think that he meant it was his boycott and his boycott alone?

A I don't know.

Q Mr. Davis, you said that several things happened to you and that you attribute those to certain people and to the NAACP. And I want to know how you came to your conclusions. Will you explain that to me?

A I can't do it, because I don't know.

Q Besides the nine people that you named, do you attribute any of your difficulties in the community to any other people?

A What do you mean by attributing?

Q I mean, do you give credit to what happened [13990] to you between you and Bailey and you and Shields—do you account that to anybody else?

A I just account who did it. That's all. I don't account it to nobody except who done it. That's all.

Q Now how do you go from the ones that done it to the NAACP?

A I done told you, I heard them fellows was the NAACP peoples, and that's all I can go by is what I hear. I don't know who the NAACP.

Q Who did you hear that from?

A My son-in-law, and a lot of people uptown. Just like we'd all be sitting around on the streets. And you don't have to be saying nothing to nobody. You just be listening. You hear a lot and you know it.

* * * *

[Witness Laura Cullins]

* * * *

[14009] CROSS-EXAMINATION

BY MR. CARTER:

Q Mrs. Cullins, you indicated that you were not a member of the NAACP.

A I was not.

Q And the reason you said you were not was because nobody ever asked you?

A No, they didn't even say anything to me about even going to a meeting. When they said—contacted me, it was on the telephone, but that I was uncle tom and I was going to the stores and violating the NAACP law.

Q If they would have asked you, would you have joined?

A No, I don't think I would have joined it because I don't belong to any organization.

Q Now the telephone calls you got on the phone, did they say that this was the NAACP calling?

A No, they always used the word we. "You don't come to the meetings, and we're coming to meet you." I said, "Well, I'm at home all alone, and just come right on. I'll be waiting for you." And they slammed the receiver up. If I asked whom am I speaking to, they said, "You don't need to know. You just keep your so and so out of the stores unless we're going to get you."

[14010] Q Now were these voices masculine or female?

A Huh?

Q Were these voices—

A Oh, they were female and grownups and children because you can tell a youngsters voice. And it was old voices on the phone.

Q Old voices and young voices?

A That's right, because the little children—they were careful. They didn't—meet me on the street and little girls would throw their dresses and the little boys would shake their head but they wouldn't say anything other than that, you know.

Q You indicated that there was a shot in the corner of your house. Could you for the Court and for my own clarification tell me when did this happen?

A On a Monday night. It happened on Monday night because I heard it, but I wasn't sure it was a shot until it was found out that there the shots was on my porch.

Q Was it Monday of this week?

A Of this week?

Q Yes.

A This past—

Q It doesn't mean too much, Mrs. Cullins, unless it is shown what date it was?

A It was on a Monday night in the month of November.

Q What year?

A In 1966.

Q November of 1966?

A That's right.

[14011] Q And that particularly [sic] night, you say—you specifically recall that night?

A I specifically recall the night. I specifically because my granddaughter said, "Grandmother, was that a shot?" And as I said from the diesel truck passed, I thought the shot was a backfire from the truck, and I said, "No, baby, that wasn't a shot. That was a backfire from the truck."

Q Who changed your mind; Sheriff McCay?

A No indeed. Sheriff McCay didn't know anything about it until about that Friday, I believe it was.

Q You didn't know anything about it either, did you, until four days later?

A I knew about it that Thursday when my granddaughter went to the front porch and sat in the swing to work out some school lessons and she saw the shots all around her feet there. And then she looked up on the wall and there was a big hole. She came and said, "Grandmother, that wasn't a backfire we heard Monday night. That was a shot." She said, "The house was shot on Monday night," because several people had asked me, "Did someone shot on my house?" And I said "No."

Q What people asked you?

A Well, as I told you, I have a garden and people buy vegetables from me. And it was a vegetable customer that said, "Mrs. Cullins, did somebody shoot on your house last night?" That was on Tuesday morning after I had been to work and back. I said, "Not that I know of. I haven't seen where." And I didn't look. I didn't pay any attention to it.

* * * *

[14012] Q Why would they ask you whether or not somebody shot?

A Well, it was the town's talk, and there was talk. And I didn't know anything about it.

Q There was talk on Tuesday night, and you didn't know it until Thursday?

A Yeah, I knew the talk was Tuesday morning, but I just never did investigate because really and truly I wasn't—I am a person that is not afraid, and I didn't think anything about it. I didn't think somebody had shot on my house so I never thought about it because when I would go inside of my yard, I always went down, as I said, to the side. And I would go in the side door so I never paid any attention to the front because my drive is a more side front than the [14013] front. And

it was in the front that they shot onto on the corner of the house.

* * * *

[Witness Murriel Cullins]

[DIRECT EXAMINATION]

* * * *

[14037] Q Did you ever talk to Alexander Collins about—

A I've talked to him. The only occasion I had to talk to him concerning the boycott was he asked me about a membership with the NAACP. And I stated that I'm Catholic, and I didn't believe in certain organizations.

Q You said what?

A Certain organizations I didn't believe in of the Catholic faith.

* * * *

[14038] Q Did anything ever happen to an automobile of yours?

A Yes.

Q Will you tell us about that?

A As I said, this was a small store in the central part of Port Gibson. It was a small grocery store and it was one half block from the street I was born on, and I knew the firemen and I would stop there when we would close the station. I was putting in somewhere around ten to twelve hours. I would go to work at six and close at ten, and I would stop by and maybe drink a beer or pick up a can or two or beer to take home.

Q What was the name of that store?

A Wolfe's Store now.

Q What was the name of it then?

A It was still Wolfe's Store. It's still that [14039] now, but before as I stated I would go up and trade for turnips store. I traded there all my life.

Q All right, tell us what happened to your automobile, if anything?

A I went in this afternoon approximately 10:15 and he was discussing with me about the boycott—how I felt about it. I said, I wouldn't be a hero if I was against the boycott or for it. I said, I believe in trading with any store I desire. Because when I earn my money, nobody tells me where to spend my money. That's why I stayed in the military twenty years. It was certain things that I didn't like in country overseas. I visited every country except Russia. In Germany, France—

Q Who is the man who owns Wolfe's Store? Is he black or white?

A He is Caucasian.

Q Was his store under the boycott or do you know?

A His store was boycotted. It was broken in several times.

Q It was what?

A It was damaged several times by people.

Q Was it burglarized or vandalized or what?

A Vandalism. And if I recall, fire was set to it one time.

Q Did you see this yourself?

A Well, I saw the damage afterwards.

Q What other damage? Were rocks thrown through the glass—

[14040] BY MR. CARTER:

Objection, Your Honor. He's leading.

BY THE COURT:

Objection sustained.

Q What other damages did you observe?

A Sir?

Q I'm going to ask the question differently. What other damage did you observe?

A Well, I observed the window breaking and the burning. That was all. And one occasion it was robbed.

Q Robbed or burglarized?

A Burglarized, yes.

Q Did this burning and vandalism occur after the boycott started or before?

A This was after the boycott was called.

Q Had Wolfe had any trouble like that before the boycott started?

A Not to my knowledge.

Q How long had he been in business?

A To the best of my knowledge, he's been there over twenty something years.

Q Let's get back to the night you stopped for the can of beer. What happened to your automobile?

A As I said, I parked my car and didn't lock it. I went in and I intended to be in there a few minutes. And he and I had a conversation and I drank a can of beer. And I may have purchased a few items. I don't recall exactly what I bought. We heard a noise. I didn't go out. I thought it was another car coming to purchase something. When I came [14041] out, my car had been driven in through the back. It's a Mustang. And the windshield had been totally destroyed.

Q How was it destroyed?

A With a brick.

* * * *

[14042] Q Have you ever been at your mother's house when she received any anonymous phone calls?

A Oh, I've answered the telephone several times.

Q About how many would you answer when these people would call?

A Well, I couldn't actually determine how many times, but I know it was more than a dozen times.

Q What would these people say?

A They would come on and say, "I know your mother returned home safe. She might not return again." I stated to them that I would like to know who was talking. And either they would hang up or say, "We'll take care of you later." But I never could find out who the we was.

Q Were they male or female?

A Well, most of them were female.

Q Could you tell whether they were colored people talking—voices or white people's voices?

A Well, truly it's very hard to detect voices on the phone. I mean, I couldn't actually swear that they were.

Q In your best judgment were they black people or white people calling?

A As I so stated, that I couldn't swear but I could assume by the conversations that they weren't Caucasians.

Q Did they mention the boycott to you?

A Oh, yes.

Q What did they tell you about the boycott?

[14043] A Well, they said, "You don't realize that we mean business. We said stay out of the stores, and you keep going."

Q Did they talk to you about—

A They would talk to me at the time I would be on. Then they would say, "Let me speak to your mother." I said, "Well, I don't think she would like to talk to you," or either I would hang up or they would hang up.

Q They said for you to stay out of the stores. What kind of stores were they talking about?

A They had reference to Caucasian merchants.

Q What county?

A In Claiborne County.

Q Did they call you any vulgar or any names of obscene language?

A Oh, I was called a few names.

Q What did they call you?

A I was called a half breed a couple of times, uncle tom.

Q Uncle tom?

A Yes.

Q What else?

A I was called half breed.

Q When this brick was thrown through your windshield, about how long had the boycott been on?

A Approximately two months.

Q Had you and your mother been getting any anonymous calls before the boycott started?

A Well—

[14044] Q Of this type?

A Oh, yes. Before the boycott, we received several calls about the NAACP—why we didn't join the NAACP or—

Q Who were these people; do you know?

A I didn't know. They wouldn't reveal their name. Nobody ever just came out and said who they were.

Q But after the boycott, did they increase or—

A They increased rapidly.

Q Did they talk a little rougher or about the same or what?

A Why they couldn't get any rougher. That roughing—they would say approximately the same thing all through time. "Why won't you people cooperate? We're going to take care of your mother." They were mostly threatening when I would come on—that they would take care of my mother. And I said, "That'll be the day." That was the only reason I returned back home before the boycott. I had seen boycotts before, and I know what they can do. I was living in California at the time of one so I know.

Q Now did you ever hear that your name was called out in a NAACP meeting?

A Oh, yes.

Q Who told you that?

A Well, at the barber shop, each barber—even though I trade with them—were a member of the NAACP.

Q Did Alexander Collins tell you—

A Yes.

Q It had been called out?

[14045] A Yes, he did. He said, "It looks like we people just don't want to cooperate." And he named my mother's name, my name. At the time my daughter was living with my mother. I have a daughter that's grown that's in California. She was at home at the time this boycott was going on.

Q Did Alexander Collins tell you your daughter's name was called out?

A Oh, yes. She was in high school last year.

Q How many times did Alexander Collins tell you that you and your mother and your daughter's name had been called out?

A I only had an occasion to talk to him approximately two times during the whole boycott.

Q Of course, he told you your name was called out after the boycott started?

A Right.

Q Do you recall when your mother's house was shot into?

A Oh, yes, I do.

Q Were you there?

A I was there at the time. But as I stated, our house is pretty large, and the T.V. room was in the back part of the house. We heard the noise, but our home is on 18 Highway, and we assumed that it was a truck backfired. And we didn't discover that the house had been fired on until after the people asked my mother if the house was fired on and she said, "Not to her knowledge." And my daughter was studying on the front porch, and she came back in and told her grandmother that the house had been shot into. There was [14046] a hole approximately five to six inches.

Q Were you with your mother when your daughter came and told her?

A That's right.

Q Did you go look at the holes?

A I looked at the hole.

Q How big a hole was it?

A As I stated, it was approximately five to six inches. And being an officer man, I knew what type of weapon was fired. It was a 12 gauge shotgun.

Q Was this after the boycott started?

A Yes, it was.

Q When did you and your mother quit getting these obscene phone calls? In your best judgment?

A They varied. She got calls mostly the whole time the boycott was going on.

Q When did this boycott stop, if it did, in Claiborne County?

A To the best of my knowledge, it was either '70 or '71.

Q Has she gotten any since the boycott was sort of fizzled out?

A Oh, no. We haven't received any calls from anyone after the boycott was lifted.

* * * *

[14049] Q Did your continuing to trade with the white merchants have anything to do with your name being called out?

A I imagine so. I never stopped going. I trade where I like.

Q You didn't hide it?

A No, I didn't.

Q Your mother didn't slip around trading with the white merchants?

A That's something I never saw my mother do.

Q She's pretty feisty, isn't she?

A She is. All of her kids are that way.

* * * *

[CROSS-EXAMINATION]

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[14054] Q During the time that you were in the military service, did you hear tell of or were you aware of the NAACP?

A Yes, sir.

Q What was your attitude toward it then?

A The truth at that time I wasn't against any of the policies of the NAACP. This was—I can recall what year it was that I was contacted and knew about the NAACP—this was in 1948. This was at New Jersey. I was shipping out, and at the time I still didn't join the organization.

[14055] Of course, I had seen liturature [sic] from the NAACP and at that time I thought the organization was an organization.

Q Okay, what I'm getting at is—getting to the question now. Your mother is Methodist and you're Catholic?

A Right.

Q When did you become a member of the Catholic faith?

A As I recall, I was eleven years old, I think.

Q And you also testified that the reason—one of the reasons why you didn't join the NAACP was that you didn't—

A Certain organizations. For instance, I'm not a Mason which my brother is. In my own way of thinking I don't believe in organizations.

Q You're just a non-joiner?

A That's right.

Q Do you know the father at the Catholic Church?

A No, I've attended the church at Natchez. I know some fathers in Port Gibson. I have gone to church in Port Gibson but that's been some years ago.

Q Did you know that Father Cangemi was a member of the NAACP?

A No, I didn't. I have no knowledge of that.

Q Did anybody in the Catholic faith suggest to you that you should join the NAACP?

A No. As I stated, I don't believe in any organizations. Not even unions.

* * * *

[14057] Q Are you saying that the burglarizing of the Wolfe's store had something to do with the boycott?

A Yes, sir.

Q How do you establish that?

A Well, at one time his store was, I would call it—the way the site is of this store, it's a sidewalk. A bunch of—I would say, teenagers would be sitting there most of the time outside. I mean, they had told people not to

go in the store, and they sit there primarily to see who went in. But as I before stated, I didn't care who saw me. I traded after my car was burglarized.

Q You still haven't talked about the burglars?

A I stated it. That the burglary was made before my car was damaged. The burning was after. And apparently somebody—it would only stand to reason that—

Q It doesn't stand to reason. Unless you can tell me why—

BY MR. PYLES:

I'm going to object with counsel arguing with the witness.

BY THE COURT:

Your objection is sustained. Mr. Carter—

BY MR. CARTER:

If the Court please, if this man is going to jump from fact to some kind of assumed conclusion and say that [14058] it stands to reason, then I object to that particular answer.

BY MR. PYLES:

He asked him.

BY THE COURT:

If you don't agree with the question, that's all right. You don't have to agree with the question. But this is argumentative when you tell a witness that his answer is wrong—it is not a correct assumption. The Court will take care of matters of this type, Mr. Carter.

Q All right. Why do you believe that the burglary was a result of the boycott?

A Well, the store was listed as a boycotted store. And if it wasn't boycotted, I can't see no reason for it to be burglarized or damaged.

Q Mr. Cullins, are you saying that they never had burglaries in Port Gibson before the boycott?

A Not at this particular store.

Q But did they have burglaries in Port Gibson?

A Sure, they had burglaries in the whole United States.

Q Are you saying that the only burglaries that occur do so when the boycott is going on?

A Certain types.

Q What types of burglaries was this? What made it different from the other burglaries?

[14059] A Well, a number of conditions. If a store is not harrassed or everything is going along smoothly, it is a community store in this neighborhood—this is a Negro neighborhood also mixed with Caucasians. This has been a family store ever since I was born. Everybody knew the family. However, he had been burglarized before—

Q Before the boycott?

A That was before he owned it, you see. I knew the store before he owned it.

Q So why did this particular burglary attach itself to the boycott?

A At this particular time the lock was broken. Whatever money was taken, I assume—I couldn't swear to it, but I would believe that it had something to do with it just from common knowledge.

Q You just assumed this. Is that right?

A Well, I believe it was. That is my belief.

Q I understand that. What I'm trying to do is determine why you believe that?

A I stated that the store was put under a boycott; he lost his trade; and this place was burglarized during this time of the boycott. It never was touched before.

Q You just testified a few minutes ago that it was burglarized?

A I stated that that was many years before this man owned the store. It was Turner's Store before.

Q Now you also testified that it was robbed. Now did this happen before your car was damaged or afterwards?

A This was before my car was damaged. I think it [14060] was the first month of the boycott if I recall right.

Q Was this an armed robbery or a single burglary?

A It was a night burglary. The lock was broken. No one was there.

Q Then the robbery and the burglary are the same thing?

A That's true.

Q Where was the burning?

A This building was set at the corner of the building. As I stated, the geographical setup of this store is kind of weird to explain. There are pecan trees all around this store, and it was a pile of pecan leaves set afire, and it caught onto the building.

Q There are some pecan leaves besides the building, and they caught on fire?

A These pecan leaves were put at the corner of the building and set afire. The pecan leaves were in a container—a barrel—a 55 gallon drum. I had so noted the barrel of leaves several times as I had gone by there.

Q In other words the barrel of leaves was there all the time. Everybody just—

A The barrels were set on the street for garbage disposal. And they—

Q When you went by, you saw the barrels setting where?

A As I stated, on the curb.

Q On the curb.

A They have wide streets at this particular locale. And the barrel was sitting fifteen feet from the [14061] building on the curb. This building sits back. It's an old building. And it was stated that the barrel was removed and piled at the end which is the back side of the building.

Q You saw it moved?

A I saw the building after it was burned. I can see it myself.

Q Did you see who burned it?

A No. I didn't see who hit my car. I tried to.

Q We're going to get to that. Do you know who burned it?

A No.

Q Did you hear who burned it?

A No, it never came—it never was proved who burned it.

Q Was anybody arrested?

A No.

Q The Sheriff was called?

A The Sheriff was called.

Q Was the Sheriff called when your car was damaged?

A Not at the time. He was notified. I reported the accident.

Q Did he come to investigate?

A No, as I stated, when I came out and saw my car damaged, I tried to find out who did it. It was a long street. I have a fast Mustang. I tried to see if I could see the reflection of the tail lights.

Q How long after you heard the noise did you go outside?

[14062] A Maybe three or four minutes afterwards. Nobody came in so naturally I went out to see if anybody was opening my door. And a vehicle—I could see the tail lights a ways off.

Q When you came out, there wasn't anybody around?

A No one around.

Q And—

A The brick was laying on the hood.

Q And you say that the backend was damaged?

A Yes, it was.

Q Somebody had run into the back of the car?

A They had rammed it and pulled off from it. The back fender of a Mustang is very soft. And what they

did, they just crushed it in. It wasn't too bad to remove the car. As I stated, I tried to see if I could find out who had did this damage. But I had no luck.

Q Did anybody tell you they were going to damage your car before they did it?

A Not come out and tell me.

Q What do you mean; not come out and tell you?

A You mean, did anyone walk up and tell me?

Q Yes.

A I didn't understand your question. No one had walked up and said anything to me.

Q Did anyone call you on the phone and tell you?

A No.

Q Did anyone mail you a letter and suggest this?

A No.

Q Did you have any kind of personal threat at all?

[14063] A No, I have never had any threat.

Q Huh?

A I said, I never have had any threat in Port Gibson before. We got along with most people.

Q They why did you assume that the damage to your car was attached to the boycott?

A Because my car was not the only one damaged in Port Gibson.

Q That night?

A Not that particular night, but there were more incidents of the same kind.

Q Now we're talking about your incident, Mr. Cullins.

A Well, as I stated, the store was boycotted. I had been seen entering this store every night. And in all assumptions, you would have come to the same conclusion; that somebody did it because of the fact that you were trading with this merchant who was put under the boycott.

Q At least that's what you assumed?

A That's what I assume—I still assume.

* * * *

[14067] Q How did you learn about the boycott?

A My mother lives in Port Gibson and she made a call. She said, "Claiborne County is being placed under a boycott." I said, "I'll be home in three days." And I was home in three days.

Q Did you tell—did you understand what this would mean as far as you were concerned?

A I did.

Q What did you think it would mean?

A I know—as I stated, I know my mother and the way she thinks and the way our family thinks. And I know she would be molested in some way. And any boy—kid is going to protect his mother.

Q Then you weren't really aware or concerned about why the boycott was being put on?

A In no way.

Q You were just concerned that you had to get back to Port Gibson to protect your mother?

A Yes. Not really just to protect her, but to be around if she needed protecting.

* * * *

[14073] Q Mr. Cullins, are you fearful of your life and well being in Port Gibson?

A Not one bit.

* * * *

[14077] Q Thank you. Mr. Cullins, will you explain to me a little bit more in detail and to the Court what it is you knew about boycotts that caused you to be disturbed when you heard there was going to be a boycott in Claiborne County?

A Well, as I stated, a boycott is a little bit more serious in larger cities. And I had seen property, stores, merchants—for instance, if a store was boycotted in the state of California, they have panel wood on every [14078] window. You do not see glass during the boycott because there's none for you to see. And by seeing these things in reality, I would say that the same thing could happen in a small town.

Q Now are you referring to a specific instance in California that shaped your opinion?

A I'm referring to every city that was boycotted, and I practically saw these three cities that I knew was under boycott, these merchants.

Q In California?

A Right.

Q Now you mentioned Watts being the basis of your belief. Are you referring to the famous incidents in Watts that were in all the papers, all the burnings and that sort of things? Is that what you're referring to?

A See, Watts was once totally boycotted. I mean, a lot of merchants. It only lasted about three months as I recall. This is not the incident that you're referring to. I know about that. That was prior to.

Q Where were you when this famous Watts incident?

A At that time I was down in Oakland California, and I had relatives in Compton which Compton is joining Watts.

Q Now did this question come to be known as Watts Rival?

A No.

Q It is not?

A No.

Q Do you know who sponsored the boycott that you're referring to in California?

[14079] A At this particular time all I have knowledge of was the merchants were boycotted.

Q So based on what you have observed, you assumed that it was necessary—or you concluded that it was necessary for you to come home in order to protect your mother as you stated. As I understand it, you returned to Port Gibson in 1966?

A That's correct.

* * * *

[14080] Q Now may I ask you how you know so much about details of the burglary of the Wolfe Store?

A As I stated, the Wolfe Store was a friend of my family. And I have talks with him, and he would discuss what was done. Because he knew about the damage done to my car.

[14081] Q Are your conclusions and statements given here today a result of your conversations with Mr. Wolfe?

A I saw the damage after having a conversation with Mr. Wolfe.

Q I understand that you could see that the store had been burned or that you could see where they had had a burglary. But I'm saying that you gave certain conclusions from an analysis that a pecan barrel had been pulled from the streets and set afire. What I'm saying are, are those statements a result of conversations with Mr. Wolfe?

A That is true.

* * * *

[14084] As far as we were concerned, we were not worried about anything happening to us directly. We figured we can replace property. It can be replaced by insurance—

Q Are you saying that is not your family—

BY MR. PYLES:

Your Honor, he keeps interrupting him.

BY MR. SANDERS:

I'm sorry. If he hasn't finished—

BY THE COURT:

Go right ahead.

Q Go right ahead.

A As I stated, the damage that was done to our property we knew that we could replace. As far as an individual being murdered or—for example, my mother was told—I answered the phone and whoever was on the phone, they said, "We're not—," and when I would say, "Who are we?" "We're members of the NAACP. We'll

take your mother out and tie her and let the mosquitoes take care of her." I said, "That'll be the day." And I meant that.

* * * *

[REDIRECT EXAMINATION]

* * * *

[14133] Q Are you in favor of getting these demands that Mr. Carter talked about by boycotting the white merchants?

A I don't quite understand what you mean by in favor. However, I have stated that I didn't think any store or merchant in Claiborne County should have been boycotted. That is my opinion. I believe that they would have complied with the same thing without an organization. I think the leaders, merchants, owners of buildings in Claiborne County could have gotten the whole thing straightened out on the phone.

* * * *

[Witness Aaron Wilson]

[CROSS-EXAMINATION]

* * * *

[14166] Q Do you know about the Black Hats?

A I heard about them, but I don't know about them.

Q What did you hear about the Black Hats?

A They were just talking about black hats, and that's [14167] all I know.

Q What was the purpose of the Black Hat people?

A I don't know none.

Q Did you ever hear about storewatchers?

A I heard about it, but I don't know about it.

Q Did you ever help watch the stores?

A Never did. I don't know nothing about it.

Q You just heard about it? You knew that it was very unhealthy for a black person to violate the boycott, didn't you?

A I knew that.

Q That was pretty generally known in the community, wasn't it? It was pretty generally known in Claiborne County that black people would be in trouble if they would violate the boycott?

A Well, I think they would.

Q Now you didn't think very much of a black person who would violate the boycott, did you?

A I sure wouldn't, because I'm trying to help the black men.

Q You would regard the black person who wouldn't go along with the boycott as sort of a traitor of the black people, wouldn't you?

A Explain that again.

Q Well, he wouldn't be true to them—

A That's right. He wouldn't be true to the black people.

• • • •

[14168] Q Now you knew about some black people who had violated the boycott and had been beaten up by other black people, didn't you?

A I never heard telling about any of them got beat.

Q You didn't hear any of them got beat. What did you hear had been done to them?

A The ones that—

Q That violated the boycott?

A I haven't heard anything, because I haven't heard it was done.

• • • •

[Witness Susie Gibson]

[DIRECT EXAMINATION]

* * * *

[14182] Q Why did you stop trading with the white people?

A They said to not go in the stores. That's why I didn't go in there. I went in there once.

Q I'll get to that in a minute. You said, they said not to go in the stores?

A Yes, sir.

Q Who told you not to go in the stores?

A Mr. Evers told me not to go in there. I come out of Ellis—

Q Wait just a minute. I haven't gotten to that yet. How long had the boycott been on when you found out [14183] about it?

A It had been on quite a while. See, I was sick in the bed, and my husband was sick. And I don't remember hearing about it.

Q Were you in favor of the boycott?

A It was all right, I guess, as far as I know.

Q Were you afraid to go in the stores?

A Sure.

Q Why were you afraid?

A Well, they said they were whipping people. I didn't know, because I hadn't been out.

Q Did you hear that on the streets of Port Gibson?

A I heard it on the streets. I didn't go in.

Q Now you mentioned Mr. Evers. Is that Charles Evers you're talking—

A Charles Evers, yes, sir.

Q Did you know him before the boycott started?

A No, sir, I did not.

Q You knew who he was; you had heard of him, had you not?

A I had heard about him. I saw him.

Q Did you ever have a conversation with him on the streets of Port Gibson after the boycott started?

A Well, do you want me to tell you about when I went in that store?

Q Yes.

A I went into Ellis' store to get all this stuff, but I didn't know the boycott was on. See, I had been sick in the bed, and my husband was sick, and I didn't know it was [14184] on. And so I hadn't been in there since.

Q Now let's stop just a minute. What Ellis Store did you say you went into?

A Norman Ellis.

Q Is that Ellis Variety Store?

A Yes, sir. Norman Ellis.

Q Norman Ellis?

A Yes, sir.

Q What did you buy in there?

A Slip.

Q A ladies slip?

A Yes, sir.

Q What happened when you came out of there?

A He told me did—he asked me, did I work in there? I told him no.

Q Who told you that? You said, he?

A Mr.—what's his name. I just told his name.

Q Mr. Charles Evers?

A Mr. Charles Evers. And I told him, "No, I didn't work in there," He say, "Well, do you know it was boycotted?" I told him, "No, I didn't." And he said, "Stay out of there." I said, "I will, thank you."

Q Stay out of where?

A Out of the stores that were boycotted.

Q What stores? Mr. Ellis'?

A Mr. Ellis' Store. I didn't know they had boycotted it. And I was on my way to the doctor.

Q Did any other black person tell you not to go in any white stores?

[14185] A No, sir. Didn't nobody tell me. I had some members, but they didn't tell me.

Q You had some what?

A Some members of my church. They didn't tell me.

• • • •

[14188] Q How many people did you hear say they were whipping people about violating the boycott?

A I don't know, because I didn't go in the stores.

Q How many people did you hear—

A Two or three of them say it.

Q That they'd better not go in the white stores or you'd get whipped?

A That's what—

BY MR. CARTER:

Objection, Your Honor.

BY THE COURT:

Objection sustained.

A That's what they say. I don't know.

Q What did they say?

A Said they whipped them.

Q They whipped who?

A Whipped the people that go in the stores during the boycott. See, I didn't go in because I was sick. I didn't want to be whipped.

Q You didn't want to be whipped?

A No, sir.

• • • •

[14189] CROSS-EXAMINATION

BY MR. CARTER:

Q Mrs. Gibson, was Mr. Evers by himself when he talked to you?

A Yeah, he was coming down the streets.

Q Was he walking?

A Walking down the street.

Q Did he tell you that he was going to whip you or have somebody whip you?

A No, he didn't say anything about whipping me. That was the ones that hearing—whipping the people that told me. I don't know. I never did go up there and see.

Q Did you ever—did anybody ever threaten you?

A No, I haven't.

Q Outside of just hearing about this, did you ever hear anybody say that they were from the NAACP suggest to you that you shouldn't go in the white stores?

A No.

BY MR. CARTER:

I believe that's all.

CROSS-EXAMINATION

BY MR. SANDERS:

Q Mrs. Gibson, I'll stand a little closer so that—

A I think that would be better.

Q How many people do you know in Port Gibson—know of your own knowledge that got whipped?

A I don't know. They told me—

Q Let me finish. How many do you know about?

[14190] A I don't know any. That's what I heard.

Q And what you related is what you heard and was that street talk or did somebody tell—

A Street talk. I didn't know because I wasn't going out. My husband was sick, and I was sick.

* * * *

[Witness James Hudson]

[CROSS-EXAMINATION]

* * * *

[14711] Q I show you Exhibit C-12. I think this is (4). Would you tell me what that depicts?

A That's in front of J. H. Lee's Grocery and Clark Whiskey Store.

Q Anything unusual about the picture?

A No, other than that's the way the watchers stood around, you know, on the street, like this guy right here. Other than that, it's just a—

Q If I went to Port Gibson this afternoon, would I see something similar to that?

A Probably not at that particular place. You would on the street corners.

Q It's not unusual for people to stand on the street corners, is it?

A Not now, no, sir.

Q Was it before?

[14712] A It was a little unusual during the boycott. They hadn't stood around on the streets then. They were usually somewhere else.

Q Where?

A Like poolroom or one of the cafes, some of the side streets.

Q I'm showing you Exhibit C-12(5). Tell me what that depicts.

A Well, to me, it brings to mind two of the what we call goons walking across the street and the marchers were in front of the others. I've seen instances like that several times, lot of times, usually with two like that abreast. I recognize those two faces. I don't know them by name.

Q When you say "what we called goons", who did you mean? Who else besides yourself called them goons?

A Well, that's what we referred to them as, the watchers. I don't know who started it.

Q Is that what Dan McCay called them?

A I can't say for sure.

Q Is that what the Highway Patrol called them?

A I can't say for sure of that. But I'd heard that expression. It was not my origin.

Q Did you ever see these goons ever beat up anybody?

A Yes, sir. I think in my testimony I believe I gave that. I'll just have to call that back to see for sure with the times. I have seen it. I think I've testified before about it.

[14713] Q You said something about Roosevelt Wyatt, "Shorty" Wyatt?

A Right.

Q You say the goons beat up on him?

A No. They threatened him, but I didn't actually see one of them hit him. He asked them to, but I didn't see them hit him or do anything.

Q And Ernest Darden?

A Same there.

Q Nobody hit him?

A No, sir. I didn't see any.

BY MR. PYLES:

I'm going to object to this. We went over this.

BY MR. CARTER:

Court please, I'm trying to find out why he calls these people goons if he didn't see them.

BY THE COURT:

Well, I think you can ask that question of him, if he ever saw any of them do anything; but other than that, it's testimony that you've already had.

Q Did you see them do anything?

A Yes, sir, quite a bit.

Q When?

A When? During the boycott, during the '66, '67, '68, I saw them many times push and shove and a time or two hit somebody, actually hit them. We called them [14714] Black Hats or goons or watchers. We were referring to the same.

Q When you say "we", who are you talking about?

A Talking about the people in general, business people and people in general, everybody else around Port Gibson. I say "everybody else"—a lot of other people.

Q Now, you testified that—

BY MR. PYLES:

Your Honor, I'm going to object to him asking him about going over things because he's already cross-examined him about what he testified.

BY MR. CARTER:

Half of the stuff I cross-examined him about, I didn't know what the testimony would be, and now I know what it is.

BY MR. PYLES:

Your Honor, I can't be responsible for Mr. Carter's ignorance in here. There is no reason why we should throw the rules of evidence out the window.

BY THE COURT:

We're not going to throw the rules of evidence out the window, Mr. Pyles, but I am going to give Mr. Carter some latitude on this matter because there were many things that this gentleman testified to that—in fact, I think he was the first witness that we had. Later testimony, later events, have cast it in different [14715] lights, and I'm going to let him go ahead. I'll ask you this, Mr. Carter, to please try the best you can to narrow this down to things, let's say supervening matters or newly presented things, rather than to go back over and rehash exactly what this man has already testified to.

BY MR. CARTER:

If the Court please, and without belaboring the point, I think the reason why I went into my notes

was that he said he didn't remember what he testified to, and I was trying to refresh his memory as to what he testified to.

BY THE COURT:

Well, go ahead.

BY MR. CARTER (Continuing):

Q O. K. Mr. Hudson, did you, on observing these incidents of violence, either intervene, call the police, blow the whistle or do anything like that?

A Did I?

Q Yes, sir.

A No, sir. I don't recall that I did.

Q Do you know—

A I did in one instance, yes, sir, the instance with Ernest Darden. I've got to get it back in my memory. I called or waved to them or motioned to the police to come.

Q And you also testified that really there wasn't any violence involved.

A No, sir, no actual violence, right.

• • • •

[Witness Charles R. Dobbs]

[CROSS-EXAMINATION]

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[14761] Q Let's go ahead and talk a little more about what we talked about yesterday. I asked you if things were better down there in Port Gibson now than it used to be. Do you remember that?

A Yes, sir.

Q And you said yes?

A Yes.

Q And you told me that you were bringing this boycott—this suit—to keep another boycott from ever happening again in Port Gibson. Do you remember that?

A I remember it.

Q And I told you I hoped another boycott in Port Gibson never happened?

A And I told you I wanted to make sure that no one else ever had to go through what we went through, and all you said was—you give the impression that everything was fine now, and to leave it alone, so I wanted—

Q That is your interpretation, isn't it?

A Yes, that was my interpretation.

• • • •

[14788] Q Did you hear the speeches?

A I went down and heard one.

Q Who made the speech?

A Evers.

Q I am sorry. I didn't hear you.

A Charles Evers.

Q Was this around the first of March, 1966?

A He led several marches, and I heard one of them. I don't know which one it was.

Q Was it before the boycott or after—

A No, sir, it was after. It was during the boycott.

Q During the boycott. The beginning—

A The first part of it. I couldn't give you a definite date on it.

Q Sometime in the spring of 1966?

A The weather was warm, yes.

Q Do you recall what he said?

A It was very detrimental.

Q What do you mean detrimental?

A Threats. I mean, we will do this to them. We will—they didn't ask.

• • • •

[14791] Q Did you ever hear any of your customers threatened?

A I heard one that I was called out—came in and bought some paint and walked out, and this young boy came up and said, "Don't you know that store is boycotted?" My customer says, "Is there a law against going into a store?" And I said, "No." We called the police and the County Attorney advised, "Don't bother with filing suit or anything."

Q Did you think it was illegal for him to tell him [14792] your store was boycotted?

A He was a young fellow, and they were stationed outside the store. Anyone that went in, they approached them.

• • • •

BY MR. CARTER:

Q I ask you whether you saw anybody have their merchandise, any of your customers' merchandise destroyed?

A Not my customers, but one across the street, I did.

Q Who was that?

A Mr. Jones' came out of his store, and they destroyed some tomato plants that a woman came out of there with.

[14795] Q What customers, not policemen, of yours were vilified, slandered, abused and intimidated of your own knowledge?

• • • •

A I don't know the man's name. He is a colored preacher in one of our churches there. He was a customer of mine quite often, and a very nice fellow, and he was approached when he came out of the store.

Q When you say approached, he was approached by whom?

A By this young boy.

[14796] Q And what was the conversation, if you heard it?

A "Don't you know that store is boycotted?"

Q Is that the extent of the conversation?

A The preacher said, "Is there a law against going into your store?" when he turned and talked to me, and I said no.

Q Then that was the same incident that you suggested before?

A Which one now?

Q When I asked you about somebody stopping your customer.

A That is one incident, yes.

Q Would you call that being vilified?

A In the manner it was done, I—

Q Tell me the manner in which it was done.

A Intimidating. It would intimidate somebody.

Q Was it slanderous?

A It may not be slanderous, but it was intimidating.

Q Abusing?

A It would be to me.

Q Did the customer indicate that he was afraid?

A Would you?

Q That isn't what I asked.

BY THE COURT:

Answer the question, please.

BY THE WITNESS:

A Yes.

• • • •

[14819] Q Mary Ross?

A She stood in front of my store a day or two and advised them that the store was under boycott.

Q Any other act?

A No.

Q Did you consider advising people that the store was under boycott an illegal act?

A In the tone of voice, yes.

Q I beg your pardon?

A In the tone of voice and the attitude that abounded at the time, yes.

Q Are you saying that the tone of voice made it illegal or the fact that it was being done made it illegal?

A When you talk to somebody, you can kind of tell whether it may be a threat. They were reporting the names [14820] and what they were doing, those that were—

Q My question to you was, whether you considered advising people that your store was under boycott, did you consider that an illegal act?

• • • •

A Yes, sir. I consider it detrimental to my business for people to stand out there and say, "That store is [14821] boycotted."

BY MR. SANDERS:

Q Do you consider it illegal?

A I consider it an implied threat.

Q An implied threat?

A An implied threat, yes.

Q How would you define a threat?

A Their names were published at the meetings of the NAACP at night, and they were read aloud.

• • • •

[Witness Waddy Abraham]

[REDIRECT EXAMINATION]

• • • •

[15000] Q Did you testify that you saw a customer of your store or another white store that had her groceries snatched out of her hands?

A Once I stood outside of my store on my front.

Q Was it one of your customers?

A Yes.

Q Was she black or white?

A She was a black customer.

• • • •

[Witness Robert L. Vaughan]

[CROSS-EXAMINATION]

• • • •

[15182] Q Mr. Vaughan, do you know of any person who used force or violence to induce or restrain someone from trading [15183] at your business?

A No.

• • • •

[15202] Q You said you heard Evers speak on several occasions. Did you hear his speech on television?

A I did.

Q Did you hear him mention that if any blacks broke the boycott, they would break their damn necks?

A I believe the words he used were, "We will break your damn necks if you go back in there."

Q Was that on television?

A That was on television.

Q What period of time—was that shortly after Dusty Jackson was killed?

A As I recall, it was probably the week after the incident.

• • • •

[Witness Rev. R. L. T. Smith]

[CROSS-EXAMINATION]

• • • •

[15311] Q Now you testify that there was common knowledge around Port Gibson that those who purchased goods for the centers were under a threat of bodily harm if they bought from the white stores?

A You didn't go far enough.

Q Well, you go all the way—

A Okay, but there was more than bodily harm. There was harm to the spirit, to the dignity of man, to the aspiration of the people around there.

Q In other words, you wanted to help those people maintain their dignity by boycotting the whites—

A No. We wanted dignity regardless. Even after all of this is over, we still wanted dignity as a man.

Q What was the threat of bodily harm that you were talking about? Those were your words?

A Well, I tried to tell you then. It was more than the physical harm—

Q I'm not asking you about the internal feelings. I'm asking you about your direct testimony that you said that they were under threat of bodily harm?

[15312] A Yes, and I should have added also spiritual harm, mental harm.

Q Well, who were they afraid would do bodily harm on them?

A Well, anybody that would call him boy when he walks up—anybody that would call him uncle or auntie. That's daggering a man to his heart.

Q Preacher, are you trying to play games with me?

A No, I'm just telling you the truth. You want me to tell you the truth, don't you? I swore to tell you the truth, tell this court the truth.

• • • •

[15324] INTERROGATION

BY THE COURT:

Q Reverend Smith, you do have me confused on one point here, and I think it's a most important point. When you were under direct examination by Mr. Royals, you made the statement that you were motivated in what was done in Port Gibson by a desire to bring about peace and harmony; do you recall making that—

A That's right, sir.

Q And then when you made this statement about the common knowledge that there were threats, you stated then that you simply wanted, and I'm quoting directly

here, "wanted Mississippi Action for Progress Program to go on uninterrupted"; that that was your primary purpose. Do you recall making that statement?

A I did, sir.

Q Now you then stated that there was intimidation [15325] in Port Gibson, and that that was common knowledge that the people there were afraid of bodily harm. Now all of these things have been testified to. My question to you is this: who was doing the intimidating? Who to your knowledge was threating to do the bodily harm down there in Port Gibson?

A Different ones.

Q The reason I'm asking is because when you were under examination by Mr. Royals the thought came to my mind that these people were being intimidated if—that is to say, they were threatened to bodily harm if they went into white stores. Then under cross-examination by Mr. Shell you made it appear that there was something that they feared from the white people. In other words, the white people were saying if you come in our stores, we're going to do this, that or the other. And I want to get this reconciled because I do think it's most important. Will you just—

A Thank you, Your Honor.

Q Will you just explain to me—

A Yes, I will to the best of my ability, sir. Now bodily harm—it includes more than breaking the skin or a punch in the eye.

Q Are you stating that—I think I can anticipate your answer—are you saying that it was the whites who were to blame for this?

A I'm not blaming whites or blacks.

Q Well—

A If you'll permit, I'll tell you my answer, sir.

Q Go ahead and answer it.

[15326] A I think the thinking among the black citizens of Claiborne County at that time and down to this date, the fear of bodily harm meant more than breaking

the skin or breaking the bones, but it also meant there the breaking of the spirit of denying my rights as a free citizen. You won't let me register; you won't let me vote; you won't give me the dignity of the mind. I've got to walk around the back to get a hamburger. I can't use the toilet. I've got to wait until I get to the edge of town. All of that was involved in the fear. Not merely bodily harm, but it was also those things that crush the spirit.

Q Then as I understand you, Reverend, this was something that the white people were doing?

A Well, whoever was doing it. It doesn't matter who was doing. We didn't want it.

Q Did you know of any blacks or did you hear of any blacks down there who were crushing another black's spirit or making him go to the edge of town to use the toilet facilities or going in the back—

A I didn't mean that literally. He may have found something before he got to the edge of town. But, I don't know. You ain't ever been a black man, and you don't know what it means to be in the town where your grandfather was slaves and—

Q Mr. Smith, I've lived in Mississippi—

A But you've never been a black man and don't know what it's like.

• • • •

[Witness Owen Cooper]

[15330] DIRECT EXAMINATION

BY MR. ROYALS:

Q State your name for the record, please, sir?
A Owen Cooper.
Q Where do you live, Mr. Cooper?
A Yazoo City.
Q How long have you lived in Yazoo City?
A Twenty-five years.
Q What is your business?
A I'm retired.

Q Before you were retired, what was your business in Yazoo City?

A I worked for Mississippi Chemical Corporation.

Q And what position did you hold with Mississippi Chemical Corporation?

A At the time I retired, I was president.

Q Are you familiar with an organization called Mississippi Action for Progress?

A Yes.

Q Are you a member of the Board of Directors?

A Yes.

Q How long have you been a member of the Board [15331] of Directors?

A Since its organization.

Q Do you remember approximately when that was?

A '67, I believe. I'm not positive.

Q If the record has shown that it was chartered somewhere late in 1966, say October of '66, and went into operation in Claiborne County in early '67, would that—would you agree essentially with that?

A Yes.

• • • •

[CROSS-EXAMINATION]

• • • •

[15338] Q I want to know whether you know for a fact that people in Port Gibson were afraid?

A No, if you—

Q That's all.

• • • •

[15376] Q Did the board have information that the cooks were being threatened with bodily harm if they traded in the white stores?

A Information had been given to us by employees that they were under threats of intimidation, and I think bodily harm would be about the only thing that would have had [15377] adversely affected the cooks because I don't think they probably could have had economic threats of much left.

Q Well, did you—this committee from the Mississippi Action for Progress; that is, Reverend Smith, Charles Young, James Gilliam call Charles Evers down there and say, would you stop these people from threatening our cooks?

A I do not remember the substance of the conversation but the presentation to Mr. Evers was the fact that we had a revolving plan to where we would purchase from the white and black merchants—the food, and he would not agree to making any exemption in the boycott so far as application of this plan was concerned.

Q Now when you could not get Charles Evers' agreement to stop threatening the cooks or stop whoever it was from threatening the cooks, you then decided to form a committee consisting of yourself, Aaron Henry and Gilliam to go with Jack Price to Claiborne County for a meeting on Monday, January 30, 1967, to discuss the problems of purchasing food in Claiborne County. Who were you going to discuss it with?

A We were going to discuss it with the white merchants and the black merchants and the leadership and anybody that represented the proposed leadership on both sides and see if we couldn't work it out.

Q Now you do not represent to the Court that you had any information that the white merchants were threatening bodily harm to your cooks for trading with the white merchants, do you?

A No, none whatsoever.

[15378] Q Did you have any information that the black people were threatening to do bodily harm to these cooks for trading with the white merchants?

A The information we had that those who were carrying on the boycott which—I would say they were preponderantly black. There may have been a few whites in it but that's the threat that came from the people having the—

Q Preponderantly black?

A Yes.

Q That's the reason that this committee called Aaron Henry—I mean, Charles Evers because he was the recognized leader of the black people in that area?

A And was the purported leader of the boycott in Claiborne County.

* * * *

[Witness Bernell Monroe]

[DIRECT EXAMINATION]

* * * *

[15427] Q How long have you lived in Port Gibson?

A About 23 years.

Q I see. By whom are you employed?

A MAP, Incorporated.

Q What is your position with MAP?

A I'm a teacher now.

Q When did you first become employed with MAP?

A In January, 1967.

Q Were you one of the first employees of MAP in Claiborne County?

A Yes.

Q What were you hired to do?

A I was hired as head cook.

* * * *

[15431] Q Did you ever tell Mr. Price that you were afraid to shop?

A No.

Q Were you afraid?

A No.

Q Are you a member of the NAACP?

A Yes.

Q Were you a member then?

A Yes.

Q When did you join?

A Let me see—probably '65. I don't know exactly.

* * * *

[15433] CROSS-EXAMINATION

BY MR. SANDERS:

Q Did anyone in Port Gibson ever threaten you because of your habits of purchasing for MAP?

A No.

Q Do you know of any threats or acts of violence ever perpetrated against any other cooks or employees?

A No, I do not.

Q Do you know of any cooks or employees who were threatened—

A No.

Q Of bodily harm?

A No.

Q Do you know of any cooks or employees that was slandered or held up for ridicule in the community that were employed by MAP?

A No.

[15434] Q Do you know of any instance in which MAP cooks refused to cook food that had been purchased from white merchants?

A No, sir, there never was.

Q Do you know any individual or group of individuals that had any act of violence against you or any other cooks employed at MAP at the time?

A No.

BY MR. SANDERS:

That's all I have, Your Honor.

• • • •

[15442] Q Was it your impression that a black person in Port Gibson could do whatever they wanted to about the boycott—they could honor it or not honor it and nobody would interfere with them in any way whatsoever?

A Would you repeat that, please?

Q Yes, I will. Was it your impression that a black person in Port Gibson could go around breaking the boycott without any problems from anybody?

A Yes, some did.

Q And they wouldn't have been cast out socially by the rest of the black people?

A So far as I know.

Q And they wouldn't have been under any threat of any physical or bodily harm?

A No.

Q Do you know who reported to the MAP Board of Directors that the cooks were afraid to go in the white stores?

A No.

Q How many cooks were operating down there at that [15443] time—say during 1966 and 1967?

A Four or five. I don't remember exactly.

Q And you say that none of them were afraid to go in the white stores and buy groceries?

A As far as I know.

Q You know that you weren't?

A No.

Q And you don't know of anybody else that was?

A Not that I know of.

* * * *

[15461] A Well, when Mr. Price first came down—that was the first time, yes.

Q He directed you at that time to go to these other two stores, didn't he? The Piggly Wiggly and the—

A He carried me, yes.

Q Well, are you telling us that you didn't want to trade there?

A No, I didn't.

Q Did you suggest to trade with one of the black stores?

A No, I didn't.

Q After he left, he left you with word that you could trade with wherever you desired; is that correct?

A Yes.

Q And from that moment on, you didn't buy any food from any white grocery store in Port Gibson, did you?

A No, I didn't.

Q Why didn't you?

A I didn't want to as I told you to begin with. I didn't trade at those stores before the boycott started. I didn't buy my groceries there.

* * * *

[Witness Julia Johnson]

[15472] DIRECT EXAMINATION

BY MR. CARTER:

Q Would you state your name for the Court, please?

A My name is Julia Martha Johnson.

Q Where do you live, Ms. Johnson?

A Port Gibson, Mississippi.

Q How long have you lived in Port Gibson?

A All of my life.

Q Are you married?

A Yes, I am.

Q Where do you work?

A Mississippi Action for Progress.

Q In what capacity are you employed?

A I was assistant cook.

Q Are you presently employed now?

A Yes, I am.

Q Are you still an assistant cook?

A No, I'm a teacher's aide.

Q When did you start working for MAP?

A I started the 16th day of January, 1967.

Q You were one of the first people hired?

A Yes, I was.

* * * *

[15474] Q Did you become a cook?

A Yes, I did. I became a head cook.

Q Did you make purchases then?

A Yes, I did.

Q Who did you make your purchases from?

A From the different stores—different stores.

Q Did anybody ever tell you not to shop at a particular place?

A No, they didn't tell me to shop in different places, but we just—they had stores that we did go in and shop. Nobody ever told me not to shop at different places.

Q Did anybody ever threaten you if you did shop someplace else?

A No, nobody ever threatened me.

Q Were you afraid to shop in the white stores?

A No, I wasn't afraid to shop at the white stores.

Q Do you know of any other cooks that were [15475] threatened or afraid to shop at the white stores?

A No, I do not. I do not know of any other cooks that were threatened.

Q Do—are you a member of the NAACP, Mrs. Johnson?

A Say what?

Q Are you a member of the NAACP?

A Yes, I am.

Q When did you join?

A I first joined the NAACP in 1966.

Q I see. Have you been a member continuously since then?

A Well, recently I got behind, but I did join back.

Q Now were you a member of the NAACP when you went to work for MAP?

A Yes, I was.

Q Did your going to work for MAP affect in anyway your membership in the NAACP?

A No, it didn't.

Q Did they indicate to you that since you went to work for MAP that you couldn't belong to the NAACP?

A No, haven't nobody told me that I couldn't belong to the NAACP because I was working for MAP.

Q Did you observe the boycott?

A Yes, I observed the boycott, but not to threaten me. It was my own personal observance of the boycott.

Q You did this prior to going to work for MAP?

[15476] A I was doing it before I started working for MAP.

Q How did you observe the boycott?

A I just stayed out of the stores, because I had my own personal reasons to stay out of the stores. There were some things I really wanted, and the things I wanted were the right to vote, the right to have a title—Mrs. or Mr. or whatever I am, and not uncle or aunt, boy or girl. So that's what I wanted. And if I wanted a job—a qualified job, I wanted to have the opportunity to be hired. Not hired because I'm black or white, but just hired.

Q And this was your reason for observing the boycott?

A Yes, it was.

Q And you were in favor of the boycott?

A Yes, I was in favor of the boycott.

Q And it wasn't because somebody threatened you?

A No, it wasn't because nobody threatened me.

Q You weren't afraid?

A Was I afraid?

Q Yes.

A No, I was not afraid.

BY MR. CARTER:

No further questions.

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[CROSS-EXAMINATION]

• • • •

[15497] Q How do you feel about black people who didn't go along with the boycott?

A I think—the way I feel about it, it's a free world. If you don't want to go along with the boycott, that's yours.

Q You wouldn't want to be friends with them if they—
A I'd be friends with a lot of peoples that don't participate in the boycott.
Q Huh?
A I was friends and have good friends. They have their own life to live, and I have my life to live.
Q Are you talking about black people that didn't participate in the boycott?
A That's what I said. I have good friends that didn't participate in the boycott.
Q Did any of them ever tell you that they had been threatened about going in the white stores?
A No. Haven't none of them told me that.
[15498] Q Was it common knowledge that there was a lot of violence going on about the boycott being violated?
A Said, was it common knowledge?
Q Yes.
A I haven't seen no violence.
Q No, wasn't it generally known—
A Was it generally known?
Q From the people that if you violated the boycott, you might get hurt?
A No, I don't recall that.
Q You never heard any talk about that?
A No, I haven't.

• • • •

[Witness Leroy Percy]

[15541] DIRECT EXAMINATION

BY MR. ROYALS:

Q State your name, please, sir.
A Leroy Percy.
Q Where are you from, Mr. Percy?
A Greenville, Mississippi.

Q What is your occupation?

A I'm a cotton farmer.

Q How long have you lived in Greenville, Mississippi?

A Since 1932.

Q There's a fellow named Walker Percy who wrote a novel called *The Last Gentleman* and another novel called *Love in the Ruins.* I understand that he is your brother?

A Right. My older brother.

Q Are you familiar with an organization called Mississippi Action for Progress?

A Yes.

Q Have you ever been on the board of directors of that organization?

A Yes.

Q Are you presently on the Board of Directors?

A No.

Q When did you get off?

[15542] A I believe in '72.

* * * *

[CROSS-EXAMINATION]

* * * *

[15582] Q Now you had information, as I believe you have testified here, that the blacks were threatening the cooks and that there had been acts of violence in Claiborne County. And how can you reconcile the employment of a man like Calvin Williams, who led this boycott to begin with and was employed by MAP, with your policy that you wanted to stay neutral and not get involved in controversial issues?

BY MR. ROYALS:

Your Honor, the witness has answered this question three-twice that I know of already.

BY MR. PYLES:

He hasn't answered it. He asked questions—

BY THE COURT:

What was the answer, Mr. Royals?

BY MR. ROYALS:

He said that he didn't know, first of all, if Calvin Williams had been hired. He said he didn't vote on it himself and that—

A I don't recall voting on him.

BY MR. ROYALS:

And that he doesn't know.

BY MR. PYLES:

He didn't say he didn't know. I'm trying to ask him how he can reconcile that policy.

A This may assist in that. So far as I recall, [15583] there was no proof or no reason to believe that the officials, whomever they were—and I can't remember their names—Dorsey, Williams or whoever—were themselves ordering violence to be threatened or done. And I believe it was our feeling that some people who became involved in the movement and the boycott decided themselves to threaten violence. Not at the orders of their superiors. I'll say this, I don't recall Williams; I don't recall Dorsey. If I as a member had to vote on either one of them and thought that they had ordered their people to whip other people, I would have voted against them. Does this answer your question?

• • • •

[15592] Q You will agree that this does represent a change from the standard policy of MAP, does it not? They are now instead of being strictly neutral are getting on the side of the black merchant?

A You mean, this motion here?

Q Yes.

A Yes, I think this did vary from the policy, but I think the circumstances were what caused this variance.

Q What were those circumstances that cause a change in that policy?

A Because the black cooks were afraid to buy at the white stores.

Q You don't say or do you say that the black cooks were not afraid of anything that the white people were doing but of the other black people who were participating?

A I think they were afraid of violence and disapproval of their friends and their neighbors, and they just weren't going to buy from the white stores.

Q That's in the black community?

A Yes.

• • • •

[Witness Gloster B. Current]

[DIRECT TESTIMONY]

• • • •

[15615] Q Mr. Current, what is your relationship with the NAACP Field Directors?

A I am the immediate supervisor of the field staff.

Q How many field staff do you have in the United States?

A We have about ten now, ten members of the staff.

Q Who are out in the field out of the National office.

A Yes. Holding a variety of positions.

Q I see. There is at least one in a foreign country.

A Well, we have one that covers—no, there is no foreign country, except Germany, where we have three branches in the armed services. There is no field person directly attached to foreign services.

Q Do you have staff people in the state of Mississippi?

A We have a staff person in the state of Mississippi, known as a Field Director.

Q Is he your subordinate?

A Well, the answer is yes, if you don't mention any name.

[15616] Q Did Charles Evers ever hold that position?

A Yes.

Q And do you remember the dates that he worked for the NAACP?

A Approximately three or four days after the death of his brother, about the 17th or 20th of June 1963, until July '69.

Q I see. And were there any leave of absences during that period?

A Yes, two or three, for political purposes.

Q I see. Now, during the course of his employment, was it necessary—or as far as any Field Director is concerned, was it necessary for you to correspond with them?

A Yes. We have established procedure of monthly reports and, anything special, there is a two-way correspondence or verbal communications by phone.

Q I see. Now, during 1966 from the first of January 1966 until the first of January 1968, do your records indicate any correspondence with Charles Evers concerning a boycott in Port Gibson and Claiborne County, Mississippi?

A Well, I regret to say that our records as they are presently constituted reflect no correspondence with Mr. Evers, and that would probably be correct, because Mr. Evers was not very much of a correspondent.

Q Would you tell the Court what the relationship between the National and Charles Evers was during this period?

[15617] A In what respect?

Q Well, as you have already noticed, he has testified that he was in difficulty with the National office. Would you explain to the Court just what that difficulty was?

A Well, it's hard to interpret what you mean by difficulty. Mr. Evers was an independent-minded person, and that's a quality we expect in all field staff persons because we cannot directly supervise a man in the field.

We rely on his judgment to implement National policy as it exists and as the needs arise in his locality. We do expect communication reports and advice, advisements sought whenever something gets into the area involving the organization. Our relationship with Mr. Evers was unique in that we would read about his activities in the newspapers frequently or have inquiries made concerning them before we would hear from him. I gather he was quite busy and in that period he had to move pretty fast. That would account for it.

Q He testified that he was called to New York concerning some action that he had taken. Would you explain to the Court what happened in that situation?

A As near as I can recall, he was suspended once by Mr. Wilkins for contravention of policy with regard to endorsement of a candidate. Mr. Evers worked in the Bobby Kennedy campaign, traveled with him, made speeches against a then New York state Senator Keating, and this was somewhat embarrassing to the National organization and in contravention of the policy which prohibits staff members, [15618] including Mr. Wilkins, from endorsing a political party or a candidate. Ours is a non-profit and a non-partisan organization, and we scrupulously avoid engaging in political activity on either side. And Mr. Evers found it convenient to work for Kennedy publicly and openly, and that was the reason why he was called to New York, as I recall.

Q Did it have anything to do with the boycott?

A No.

Q Have you ever discussed the boycott with Mr. Evers on any occasion?

A I cannot truthfully say that I've discussed this particular boycott with him on any occasion. He, as others, was cautioned as to the NAACP policy on selective buying and on patronage and on direct action activities, to at all times consult with the National office, and that would be the Legal Department.

Q Now, are you saying that the National does not approve of boycotts or picketing or things of that nature?

A We do not approve of engaging in any kind of activity which is illegal. We do approve of activities in conformity with the First Amendment, rather freedom of speech, assembly and such; picketing within guidelines which are in the manual and which we lay down. Picketing varies from locale to locale, the number of pickets, the manner in which the manual has to be used. All of this information is supplied staff and volunteer leaders, and we try to admonish them to abide by the advice. Now, with reference to this particular incident, I must say that I [15619] do not recall discussing this directly with Mr. Evers.

• • • •

Q In 1966, could you tell the Court how many members there were in the state of Mississippi?

A Yes. According to a note from our files, we had 9,794.

Q In what year?

A In 1966.

Q And how many was it in '65?

A I really can't give you that figure. It would be somewhat similar. I have only from '66 up to the present time.

I see. How many members did you have in 1969?

A In '69, the membership had climbed to 15,223.

Q And in 1970, what did the membership go to?

A Membership dropped to 8,276.

Q What do you attribute that drop to?

A The traumatic reaction to the action here represented, the lawsuit, the pressure upon the funds, et cetera, and the pressure.

• • • •

[15621] Q Does the occasion ever arise for the National to send money to the branches?

A Yes. And National sends a lot of money to the state.

Q Would you explain to the Court how this occurs? [15622] A Well, we have maintained a state operation, the employment and payment of a Field Director, his secretary, his office rent. The entire Mississippi operation is paid for by the National organization.

Q Now, is it paid for by depositing money in a Mississippi bank and then writing checks on the account, or are those salaries and rents and what-not paid directly from the National office?

A Those salaries and rents are paid directly from the National office to the parties involved, the employees and the landlords, et cetera, and the telephone company, Southern Bell. I can testify to that because I'm the one they call when we owe them.

* * * *

[15624] Does the NAACP receive any funds from anything [15625] other than memberships?

A Yes.

Q And what would that be?

A Well, generally around the nation we might receive some legacies. We would receive funds from money raised by branches and state conferences over and above memberships, in terms of special purpose, National purpose. We would receive contributions from well-wishers and organizations and church groups, labor unions, other groups that are interested in the program, not much. Primarily the NAACP budget comes from the membership. About 90 percent of it comes from the members themselves.

Q I see. And what does the membership get for their dues?

A The individual member gets nothing except that he's a member of a class in which the activities of the organization benefit him. The legal actions of the Association through the years have been class suits. And the improved economic status of black Americans results largely from the work of this organization in many fields.

Thus an individual member has supported that by being a member. A member also gets improvement in his local situation pertaining to civil rights and political involvement.

Q Does the NAACP membership entitle someone to legal representation individually?

A No, Counselor. That's one of the problems, you know. Membership does not automatically entitle a person to being represented. In other words, we do not supply direct legal representation. However, whether a [15626] person is a member or a non-member, if he applies to a local branch or any other unit for representation in a matter in which the rights of a group or an individual have been abrogated, he could count upon the NAACP investigating that, and if it found it was a case for the organization becoming involved, whether he was a member or not.

Q Do you know of any instances in Claiborne County or Mississippi where the National office provided legal representation for anyone in the state of Mississippi individually?

A Well, I'm not sure that I could answer that directly. I would say yes, we did provide legal assistance to the State President in several matters in which he was involved, all the way up to the Supreme Court, as I recall.

Q Do you recall whether National provided legal representation for anyone in Port Gibson or Claiborne County during the years 1966 through 1969?

A I don't recall without—the National, I would say no. The state conference may have or the local branch may have. But we did not provide any direct assistance to Claiborne County. We do have retained here a lawyer, Jack Young, and he would be in a better position to answer that.

Q Is there any other retained lawyer in the state of Mississippi other than Mr. Young?

A Not regularly retained, no.

Q Do you retain lawyers in other states over this country?

[15627] A A few. But not on the same basis as we have in Mississippi. Here again is a unique situation. Mr. Young has been on retainers for many years. I don't know any other state that had that same operation. We've had private counsel. We've had some retained, but not regularly retained.

Q Do you know whether or not Mr. Young ever went down to Port Gibson or Claiborne County to represent anybody?

A Of my own knowledge, I can't testify to that, but I would rather suspect that he may have. I know he has traveled the whole state and frequently represented persons involved in civil rights activities connected with the NAACP.

Q I see. Do you know whether or not the NAACP has posted any bonds for persons who were arrested in Mississippi?

A Yes. We have posted considerable bonds and forfeited considerable bonds in this state.

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[CROSS-EXAMINATION]

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[15630] Q Do you know Mr. Rudy Shields?

[15631] A I have met him.

Q Would you say that Mr. Shields' reputation is generally known throughout the United States among people who are familiar with the black movement?

A Fairly well known. I know him better than that perhaps because I have met him on two or three occasions in Mississippi.

Q Was Mr. Shields an employee of the NAACP during the years 1966 up to the present time at any time that you know of?

A Mr. Shields has never been an employee of the NAACP.

Q Who exercises control over Mr. Shields when he is in a community, as far as you know, and in a situation where the NAACP is involved?

A Well, this is my observation of Mr. Shields, that he is an independently motivated person who operated on his own. Certainly the NAACP National Organization and the state organization, to the best of my knowledge, never employed him to do anything for us. However, he did engage in certain activities in the state and still is a resident of the state. But he is not directly connected with our organization.

Q Did you have any control over his functions and what he did and what he didn't do?

A No.

Q Do you know what his relationship was with Mr. Evers?

A I can't directly testify. I'm sure they knew each other. It was Mr. Evers who introduced me to Mr. Shields. [15632] But beyond that, I can't say.

Q Do you know whether Mr. Evers had any control over Mr. Shields' activities?

A I do not know.

Q Would it be a fair statement, based on your knowledge of Mr. Shields, to say that he really didn't pay any attention to the control of anyone when he engaged in these activities?

• • • •

[15633] BY MR. ROYALS (Continuing):

Q I was trying to get to the point of whether you're familiar with how Mr. Shields operates. You know, some of these people operate in kind of a strange and [15634] unorthodox manner. Do you know how it is that Mr. Shields takes care of himself and what he does and who he answers to when he gets involved in one of these campaigns? That's what I'm trying to get at.

A It's been some time since I've seen Mr. Shields; but on the one or two occasions that I did see him and talk

with him and had others to mention his activities, I would consider him to be somewhat of a maverick, a person who was interested in, involved in activities, seeking to bring about a cessation of discriminatory activities in an area, certainly an advocate of direct action, of protest procedures of various types. He was not responsive to, as I could gather and judge, any kind of discipline that an organization such as the NAACP would impose upon its participants. He was a loner, if I might use that expression.

Q And would it then be fair to say that he conducted himself in the way that he saw fit without answering to anyone?

A Yes.

• • • •

[15639] Q Without divulging in any detail, does the retainer Mr. Young has with the NAACP include the defense of individual cases or handling NAACP matters in regard to the service of process and so forth?

A Well, it depends on how Mr. Young views his role. It has been sort of a loosly-drawn [sic] agreement through the years. On occasions he has represented persons on misdemeanors and has been associated with counsel in broader trials. It's been a pretty broad relationship. He has gone to places throughout the state to investigate matters and has been in consultation with local officials, judges and others, to obtain release on bond or personal recognizance of individuals arrested.

Q Now, in instances where he does that kind of a thing, does he do that at the direction of the National?

A Well, he does that under a general arrangement with the National that he is our lawyer in Mississippi. And he would be the person who would make the determination as to whether this is something that we should be concerned with or in.

[15640] Q And in those instances, does he confer with you in the National office or someone else?

A Usually with the general counsel. If it's a branch matter in which he finds that there is some need for the Department of Branches to become interested, he might relay that to me. But usually his contact is directly with the Legal Department.

• • • •

[15643] Q Are there instances where your local branches would have holdings of real estate?

A Well, by vote of the National Board in the '40's—because I was involved then as Executive Secretary of the charter branch—branches were not permitted to hold property in their name or to purchase property. So to the best of my knowledge, there would be no branches holding real estate or property in their own name.

Q Do I understand you to say that there is a policy from the National against branches holding real property?

A Well, it's discouraged. Many branches would like to buy a building, and you get into a lot of problems with that. In the manual, I believe there is something to that effect, which indicates about ownership of property.

Q Do I understand then your answer is that is a policy from the National to the branches against the ownership of real property?

A I would have to refresh my memory on it. In general, we discourage the ownership of real property by [15644] branches. Even where legacies are concerned, usually these legacies are in the name of the parent father, but there are ways in which perhaps the local branch might come into some type of property, but it would be extremely unlikely. Certainly we don't encourage it. And we would attempt to discourage it. That's the best answer I can give you on that. Because unless I can refresh my memory about the policy, I know that we do not desire them to own property.

• • • •

[15645] Is it your prerogative or your duties within the purview of supervising the various field representatives over the United States?

A Yes, the employed representatives.

Q Yes. Specifically, prior to his death, you were the immediate supervisor of Mr. Medgar Evers, weren't you?

A Yes.

Q And following his death, he was replaced by his brother, Mr. Charles Evers, wasn't he?

A Yes.

Q And you were certainly aware of Mr. Charles Evers' employment, weren't you?

A Yes.

Q Did you actually employ Mr. Charles Evers?

A Well, Mrs. Ruby Hurley made the initial discussion with Mr. Evers, and he was actually employed by Mr. Roy Wilkins, who employs all of us.

Q You knew about his employment, of course.

A I did.

Q And after his employment, was he given any special training or instruction in the National office?

A I can't recall that Mr. Evers ever received the same type of formal in-service training that Field Directors receive, primarily because he came into the work upon the death of his brother at a very difficult time for all of us, and he volunteered to assume the position that his brother had had to surrender because of death. And at [15646] that time, if you're familiar with the climate and the situation in Jackson, there would not have been time for that to take place. We needed someone immediately. He was willing to assume it. It was a courageous act on his part to give up his livelihood in another city and come back home.

Q I believe he was in Chicago at the time that this occurred, wasn't he?

A That is correct.

Q And he moved into Mississippi and Mrs. Hurley recommended him and Mr. Wilkins then hired him?

A Yes.

(There was an off-the-record discussion.)

Q Broadly speaking, what were Mr. Charles Evers' duties when he was retained?

A He was retained as a Field Director for the state of Mississippi to serve as the person in charge of the branches throughout the state, visit with them and advise them, to investigate cases referred to the state office, and to generally carry out and implement the programs and policies of the NAACP in this state.

Q Among other things, was he expected to organize new branches as the occasion might present itself?

A Yes. And he did that quite well.

* * * *

[15654] Q What I have specific reference to, Mr. Current, is in the copy which you supplied to me, under Article I, Section 2, there is an underlining of the last sentence there, which was in existence, that is, the underlining was in existence when you handed the copy to me to be introduced in evidence.

A That's my underlining. I underlined that.

Q So it does provide, sir, that "the State Conference shall be subjected to the general authority of the National Board of Directors and shall work in conformity with the principles and policies of the National Association", doesn't it?

A That language is in every constitution.

Q Matter of fact, that sort of language, that word "shall" runs through all of the constitutions and with specific emphasis as to the branches and the youth councils, doesn't it?

A Yes. I'm smiling because the word "shall" is almost meaningless in its execution. It's in there, that's true, and it does carry the implication of force that they

must abide by. However, I would say that is breached more than it's observed.

Q Well, the right to have these things done [15655] exists by virtue of these constitutions, whether the right is exercised or not.

A Correct.

Q Now, you were discussing the general policy of the National Association, and specifically with reference to Exhibit D-9, which is your Handbook of Civil Rights. I ask you with reference to Part 12 whether or not this was written or revised as a result of the outcome of the Overstreet hearing in Georgia.

A Well, I think I'm familiar with Overstreet.

Q Yes, sir.

A I would have to answer that question and say no and qualify it.

Q All right.

A There was always a difference of opinion among lawyers in the Association about this type of activity. Mr. Marshall, who now sits on the Bench, was one who didn't—and most lawyers that I know did not agree with the idea of boycotting. As long as I have been associated with National and with the Detroit branch, with which I was Executive for five years, it was our feeling about boycotts and restraint of trade that the Association should not engage in them, the branches should not, and advisement was always given in that particular. However, protest activities, picketing, negotiations, consultations and efforts to bring about reduction in discrimination by whatever legal means was available was always encouraged. The term "boycott" was always avoided, in the first place, because it suggested an illegal activity. The change does [15656] not, to my knowledge, take place recently, if that's what you're driving at involving Overstreet. Overstreet was a peculiar case that arose in Savannah. The branch was only peripherally involved. The State Conference, I believe, was released from the action as a participant. Judgment was obtained against

the National organization, which had nothing whatsoever to do with that case in any particular, except that they were able to get judgment against the parent party for an act, so-called, over which it had no control, because we were exercising the "shall" portion. And if all particulars had been observed, Oversteet would have never occurred.

Q Do I understand you to say that it has been the policy of the National to stay away from boycotts and to avoid the use of that term wherever possible?

A Absolutely.

* * * *

[15690] Q Mr. Current, there were a number of boycotts that took place in Mississippi from 1963 through 1969 and which were initiated by the NAACP chapters, weren't there?

A Well, there were a number of protest actions, demonstrations, efforts to remedy policies in Mississippi in a number of cities. Whether you would call them all boycotts, I'm not really able to say, unless you specify the ones that you have reference to.

Q All right, sir, I'll do that. Are you familiar with a boycott brought in Clarksdale, Mississippi through the sponsorship of that branch, the Coahoma County branch, led by Dr. Henry, Aaron Henry in 1963?

A Dr. Henry was engaged in many, many actions.

Q Yes, sir. And many boycotts, wasn't he?

A Well, you term them boycotts. Perhaps he called them selective buying. But many, many, many actions in and around Coahoma County that might fall in this category.

Q Did he get clearance from the National office on those before he proceeded with them?

A No. As State President and President of the Coahoma County branch, he would engage in whatever action that the branch called for.

Q Even in view of your policy as set forth in your NAACP Civil Rights Handbook that's been introduced this morning?

A Yes. Let me explain how branches operate.

Q All right, sir.

[15691] A There is general knowledge by NAACP leaders of the program and policy of the organization. And they would apply it as they understand it in a given situation, after discussion, after negotiations, and without consultation with the National unless it was breaking new ground or something in which they felt the need for certain advice which would not be available to them in the state. But in this state we had a very good legal representation available to them. So it would appear to me that any action taken by Aaron Henry would have been in consultation with or after consultation with Jack Young.

Q So whatever Mr. Henry decided to do, you would assume would have been done after discussion with the legal counsel here. Is that right?

A That's an assumption I would make.

Q And, therefore, would not be in contradiction of Part 12 of your Civil Rights Handbook. Is that correct?

A Correct.

Q Now, were you aware that Aaron Henry was in Port Gibson, Mississippi in 1969 and participated in a march in support of the boycott then?

A No. But I would imagine that if he were invited to speak or in some manner assist the local branch in an activity, that he certainly would have been there.

Q And this would not have been in contravention of your policy, as I understand your testimony.

A No.

[15692] Q In other words, the Mississippi State Association was allowed to do pretty much as it saw fit so long as it didn't get too far out of line, wasn't it?

A I think that's correct.

Q And you didn't bother yourself too much about Mississippi for you felt that Aaron Henry and your

leadership in Mississippi, you felt it was being supported by strong leadership and intelligent leadership with good legal counsel.

A Yes.

• • • •

[15703] Q And in 1970, they had a rather severe drop again, didn't they?

A Well, that's a very large drop; which if you plot it on a curve, you can see it's extraordinary.

Q Yes, sir.

A So if there was a normal fluctuation up and down in membership, why would this take place? And I related it earlier to the impact of the suit or the legal action.

Q Between '69 and '70.

A Yes.

Q In 1971, it dropped again about 50 percent, didn't it?

A Well, yes.

Q And in 1972, it came back up about 50 percent, [15704] didn't it?

A Yes.

Q Little more than 50 percent, didn't it? No, not quite, but approximately.

A Not quite.

Q And in 1973, it dropped back down again, didn't it?

A Yes. And you would have to, in plotting these rises and declines, ascribe some of it to leadership factors as well as other factors. I'd have to examine in detail. But the drop between '69 and '70 was experienced by what happened in terms of this particular suit, and that corresponds to the drop for the entire state, which went from 15,223 to 8,276. And then thereafter we slowly began to recover throughout the state despite the fact that this action had been existent.

Q Yes, sir. So in 1973, you were back to 12,000 members, in round figures.

A Yes. And another factor there is that in '72 we have a new Field Director, Dr. Burns. The work has been

proceeding throughout the state with new vigor, and the climate in Mississippi is much improved, much, much improved. This would have some reason for it.

Q Do you know or have any independent recollection of an occasion when Mr. Evers was cited to show cause before a body or a committee or some group of the National of the NAACP in Birmingham, Alabama?

A I don't recall any formal citation to Mr. Evers to appear before a group. To the best of my recollection, this possibly was in '66. That was when we [15705] had a special convention in Birmingham, which was in September, I think, '66, ordained by the National Convention to meet there. Some of Mr. Evers' statements, and more so than his activities, which were interpreted as being at variance with policy, elicited reprimands from the Executive Director. And it might have been that he was under some threat of internal disciplinary measures.

Q You don't recall that he was. This is your surmise?

A No. I'm pretty fairly certain that he felt threatened. I would rather believe that he voluntarily showed up in Birmingham with a group of people in support of his activities.

Q Do you recall that he did show up over there with two busloads of people?

A I don't recall two busloads, but I recall that some people were there.

Q You are advised that he has so testified, aren't you?

A No, I'm not really. I'm telling you, since you bring up this information, that Mr. Evers' relationship with the National leadership, Mr. Wilkins and me, his immediate superior, was always one of interest and uniqueness. But the job he did was certainly a good one and the public in Mississippi liked him very well. Therefore, you don't deal with that type of employee the same way you would deal with another who observes all of the rules and all the regulations and dots his "I's" and crosses his "T's.". He didn't dot "I's" and cross "T's".

[15706] Q But he got a job done.

A But he got a job done. So he lived with us and we lived with him.

Q You kind of bent, as the twig grew. You bent with the twig, didn't you?

A Well, I guess you could put it that way.

Q Yes, sir. I believe you testified on direct examination that Mr. Evers was suspended for his political activity during the Bobby Kennedy campaign.

A Yes.

Q Now, when was that?

A Well, that would have been shortly after he joined the staff. Joined the staff in '63. I believe it would have been in '64 sometime.

Q Did I understand you that he stayed with the Association in his capacity as Field Director until—

A —'69.

Q —'69. And it was rather late in '69, wasn't it, when he left?

A July of '69.

Q July?

A Yes. But he was on leave several times during '68.

Q On leave for what purpose?

A Well, campaigning. I think he ran for office, some office.

Q Ran for Congress one time, didn't he?

A He ran for office. I'm not sure exactly what office.

Q And when he ran for office, he would have to go [15707] on leave.

A He took a leave.

Q How long a period of time was he on leave? Have you got his work record there?

A No, I don't have that type record, but he went off the payroll. Let's see. I have a note here from Mr. Wilkins to the Chief Accountant, and this had to do with his restoration to the payroll.

Q His restoration?

A Yeah.

Q When did he come back on?

A He came back March 13th, '68. This was during an election campaign to fill the unexpired Congressional term in the Mississippi 3rd District. And when that was over sometime in March, we restored him to the payroll. And then there is another memorandum here, so apparently there was another campaign, from me to the Chief Accountant that I had been informed that as of June 10th he had resumed his duties as Field Director in Mississippi. He had at least two leaves.

Q That was June 10th of what year?

A Of '68. At least two leaves in that particular year.

Q In that one year.

A Yes.

Q Is that all you have any notations of?

A That's all I have notations on.

Q And when he went off the payroll in July of '69 was when he became the Mayor of the town of Fayette. [15708] A Fayette, right.

Q Referring again to your Constitution and By-Laws of your branches, Exhibit C-40, on page 26 again, there is a provision in there under Section 2 that the National Board can call up an individual member and either expell him or admonish him, isn't there, or reprimand him in some manner?

A Well, let me say, sir, Since 1946, it's been my job to prosecute people in this particular respect, and we have never brought up any member under the inimical clause.

Q You have a right to do it.

A We have a right to do it.

Q Yes, sir.

A And I would also like to say that only upon the filing of a complaint by three or more members in good standing would this procedure proceed. And you get into substantially what you have here, court hearings, stenographers, lawyers on both sides. This is in there, but it's very, very seldom invoked.

Q You wouldn't deny, sir, I'm sure, that as you would go through Exhibit C-40, which is your Constitution and By-Laws of a branch, that on every page the word "shall" appears at least once and sometimes as many as 15 times, would you?

A No, I wouldn't deny that.

Q And these are the requirements that are set out for the branches to operate under, as set forth by the National office, aren't they?

[15709] A Right. Correct.

* * * *

[15713] Q Yes, sir. Are you aware that Mr. Evers wrote a book called "Evers"?

A Yes.

Q Have you read it?

A I would think that I've read it. I can't say that I digested it, but I scanned it.

Q In that book, he referred to the boycott in Port Gibson in great detail, didn't he?

A That's right.

Q And he mentioned having been armed.

A Armed?

Q Armed. And the use of weapons, if necessary, including hand grenades, didn't he?

A In the book?

Q Yes, sir.

A Mr. Evers did not write the book.

Q Well, it's got his name on it.

A He dictated it to somebody, or he had a ghost-writer.

Q Well, sir, he admitted the book when we had him on the stand.

A Is that so?

Q Did you know that?

[15714] A I cannot understand why I would have to even corrobotate [sic] what's in the book because, if it's there, it's there.

Q If you read it, do you disagree with what the book contained?

A I can't recall. I disagree with some things that I recall are in the book, yes.

Q What, in particular?

A Well, there are some things in the book that were purely personal. There were some things that seemed to be farfetched, and perhaps some things that were true.

Q Sir, on page 9 of his book, he refers to "we"—meaning I don't know whom other than the organization he represented and himself—and he said as follows: "Sometimes we had to discipline our own people, just like Mama did with us."

A In what context, sir?

Q In connection with the boycott.

A In Port Gibson?

Q Yes, sir. Well, all boycotts. "Tan them a little bit. Nothing wrong with disciplining your own family. I'm not saying we beat anybody up. We took care of them in a way they understood. People would catch them coming out of an uncooperative store and take their bags away from them, destroy the bags. While they were paying to keep us in slavery. Or a motor would lock on a car. There might be a bit of sugar in the gas tank. Then occasionally maybe somebody—I didn't do it—but somebody would send a brickbat through a window around midnight with [15715] a telegram saying, 'You shopped at such and such a place.'" Now, was this the policy of the NAACP?

A Absolutely not.

BY MR. CARTER:

I object, Your Honor. The book is in evidence. Mr. Evers has testified to it. And just because he said it, and even if he did say it, I can't see where this has anything to do with the testimony of Mr. Current.

BY THE COURT:

He simply asked him if this was the policy of the NAACP. Now, let's go back and reconstruct this thing. Charles Evers was hired by the National office as the Field Representative or the Field Secretary for the entire state of Mississippi for the NAACP. According to Mr. Current's testimony, he held such office at the time the Port Gibson boycott began and for some time during its existence until about July 1969, I believe. This book was written, as I understand it about that boycott. He used the term "we". He was representing the NAACP at that time. And I think your question was fairly asked to Mr. Current or of Mr. Current, is this NAACP policy, and I think he should answer the question. The objection is overruled.

A Yes. That is not—the words of Mr. Evers in that book do not constitute NAACP policy. We had nothing [15716] to do with the writing of the book, did not see it in draft or until it was published. The policy statement which imputes the use of violence is totally at variance with all advise [sic] that has ever been given to NAACP leaders, staff people. We certainly would never have condoned any type of pressure on persons to participate in this kind of action, by staff member, by the State President or by any others. The book, of course, was written to sell. And there is a lot of exaggeration in there, in the book, editorial license you might call it, written at a time he was getting ready to campaign for something; some confessions that ought not to have appeared in a book. I see no relationship of the book to National NAACP policy. And at the time of its writing, I don't believe he was on the staff.

Q Yes, sir. But he was writing about incidents that did occur while he was employed by the NAACP, wasn't he?

A Right. And about incidents in a vein in which he knew that they were not condoned and, if true, would not have been supported by the National organization.

Q Let me ask you this, sir. Has the National organization or any of its officers officially denounced this or disavowed these statements Mr. Evers has made in his book?

A I don't recall that we have made an issue of the book.

Q Yes, sir. You just kind of wish the book would blow off and go away somewhere, don't you?

* * * *

[15736] Q Now, on page 132, Mr. Evers, in commenting on his activities in the boycott in Natchez, Mississippi, stated, and I quote: "We had guns and hand grenades and everything it took to work with, and we meant to use them if we had to." Are you familiar with that statement [15737] in the book?

A No, I'm not familiar with that statement in the book.

Q Were you aware that Mr. Evers had arms here in Mississippi that he intended to use if he had to?

A He never discussed such with us. I'm unaware of any armaments that Mr. Evers had. I do know that he had to have guards around his house to protect him from the same type of fate that his brother suffered. And it is possible that in his trips around the state he had protection. But for that precise statement, I'm not familiar with it.

Q The National never disavowed this statement in any way, did it?

A No. We would consider that a question of self-defense might be more implied there than a violent approach to redressing the wrongs there.

Q Very well, sir. On page 134 of his book, in commeeting on the Natchez boycott, Mr. Evers stated, and I quote: "We had our protective squad. We had all our own guns. We didn't go around bragging about it, but

we were ready to enforce those boycotts, to die if necessary, and they knew we were ready and we'd do it all over."

A Are you speaking about Natchez now?

Q Yes, sir.

Q [sic] Are you familiar with—well, let me just positively state that Natchez is the area in which several NAACP persons died or were bombed and maimed. It would be understandable if there was some protection on the part [15738] of those in terms of self defense.

Q Sir, may I call your attention to this one part of that quote that I gave you? "We were ready to enforce the boycotts, to die if necessary." This is in relationship to the weaponry that he said that they had. Did you ever disavow that?

A We never disavowed the book. We did not have any knowledge of weaponry that was involved in the activity, but we do have knowledge of Wallace Jackson and of Metcalf and persons who were seeking to redress grievances dying or being maimed in that area.

Q There were two people specifically of the black race who were injured. One was killed and the other one was injured. Is that correct?

A Yes.

Q One of them was named Metcalf and the other one was named Jackson.

A Jackson.

Q So those are the "several" that you mentioned that had received injury or death in Natchez, aren't they?

A Those are the two that immediately come to mind.

• • • •

[15741] BY MR. SHELL:

We offer in evidence the article from the Charleston News and Courier of July the 8th, 1963 at this time.

BY THE COURT:

Let it be received and marked as Exhibit C-87.

(Said July 8, 1963 Charleston News and Courier article entitled "Negroes Hear Roy Wilkins, Then State Orderly March" was marked EXHIBIT C-87 to the testimony of Gloster Current, it was received in evidence, and is as follows:)

* * * *

[15743] BY MR. CARTER:

Court please, we will object to all of these. There is no reference to Port Gibson at all.

BY THE COURT:

Let's get on with what the witness has to say about them or whether he can identify them as being in any of them.

BY MR. SHELL (Continuing):

Q Mr. Current, I hand you a series of newspaper clippings covering a period, I believe, from about 1963 through 1969, and ask you if this is the type information that was made available to you or you learned about in connection with various boycotts going on in Mississippi during that period.

BY THE COURT:

Mr. Current, let me clear one matter up here so you won't be laboring under any misapprehensions on it. The testimony has tended to be to the effect that nobody communicated with you or with the National office regarding this selective buying campaign or boycott, if you will, in Port Gibson, Mississippi. And then there has been quite a discussion about boycotts or selective buying campaigns in general. And I think that the thing that counsel is doing here by cross-examination is to ascertain the attitude of the National office to matters of this type.

[15744] Now, you have testified just a few moments ago that usually the way you found out about

these things was to read them in the newspaper. You said that they were read in the newspaper and that the NAACP National office did have a clipping service, but that sometimes these things got to you late. But the thing that we're trying to find out here now, I feel sure what's in counsel's mind here is the attitude and knowledge. Now, whether or not anything in these articles is true is something that's beside the point. What counsel is asking here now is that these articles be admitted in evidence in toto, that is, as a composite, as being representative vel non, or not, of the type of information that you received in National headquarters. And that's exactly what he's doing here at this point. I don't think he is asking you whether or not each and every one of these things is true. And it's just simply to find out if this was the type of thing that you received which you got your information from. All right.

A In responding to that question—

BY THE COURT:

I'm not asking the question. I was simply explaining it.

A I appreciate that, Your Honor.

[15745] BY THE COURT:

The reason I said that is because I don't want you to be laboring under the apprehension that this Court would take each and every line in each and every one of those articles as being true. That's not the purpose at all.

A Thank you. I appreciate the clarification. I was going to ask counsel, if I could, with respect to, for example, the last clipping he brought forth, I think that it should clarify for all concerned the manner in which we participated and the advice which was given during the course of such participation. For example, Mr. Wilkins, in the Charleston News and Courier, who parti-

cipated in the demonstration down Main Street, made it clear that we would not advocate violence and that any demonstration would have to be within legality. And I'm certain that even in these clippings which report on NAACP local branch activity, they would be in line with what's in the Charleston clipping, in response to a reporter, that these are locally initiated and sponsored. And always we would advise nonviolence and without any effort to intimidate or harass.

Q My question, sir, was the group of clippings which I've handed you, are they rather typical of the type of information that would be brought to your attention as to boycotts being conducted in the state of Mississippi during that period of time from 1963 to 1969.

A These are typical.

• • • •

[15752] Q Mr. Current, when these matters would be called to your attention, did you in any manner contact the several branches that were involved or were purported to be involved and call to their attention part 12 of your NAACP Civil Rights Handbook heretofore introduced in evidence to them?

A Specifically with respect to these clippings and reports, I would suggest that we did not. Frequently, at least in two ways, at the state conferences and regional conferences, spring and fall, and sometimes at annual conventions, the whole question of direct action tactics would be reviewed, and also general memoranda would be sent to branches from time to time, advising them what not to do and to avoid certain things. This is done periodically.

Q Did you in any specific instance in Mississippi suggest or require that the local branch contact your attorney in Mississippi, Jack Young, or refer the matter to your legal counsel in the National headquarters to determine the legality of their action?

A We have only said to the Mississippi branches—and they have had a unique advantage over many others because they have a resident counsel—that they were to consult with counsel before engaging in any types of activity, seeking his advice. In fact, counsel here has had an even more responsive connection because he has generally met with the state conferences when they meet and has been available for counsel.

[15753] Q Is it your impression that as many boycotts suggested as having taken place in Mississippi during this period of time were all cleared with Mr. Young before the boycotts were begun?

A No, I would not want to suggest that. I would have hoped that, but it's quite likely that many of them were not.

Q Matter of fact, you rather strongly suspect that many of them just went out on their own and started these boycotts, don't you?

A Well, I don't like the word "boycott" because most of these actions were demonstrations, protests, picketing. Direct action protests would be more in keeping with what took place, often remedial by such means without the necessity for any further activity.

Q You were interrogated earlier today with reference to funds which came into the hands of the various local branches, and I believe your testimony was that you shared only in the membership fees to the extent of $2 out of every $4 that was collected for each member on a regular member. Of course, on a youth member, it's a smaller amount of money, isn't it?

A Yes.

Q Now, isn't there also a requirement that in the event there are special campaigns to raise funds for any purpose in connection with the NAACP, there must be clearance with National and an allocation made between National and the local branch as to the division of those funds?

[15754] A Well, that's not a correct statement of that particular paragraph in that it would not have to be

clearance with the National prior to sponsorship of a fund-raising activity.

Q Yes, sir.

A It is required that half of the net proceeds for any fund-raising, entertainment or other effort locally be shared, except where such activity is for a National purpose, which is rare. In actuality, there are not too many such affairs held and that's not observed strictly nor do we have any way of really enforcing that.

• • • •

[15762] Q You have testified that there was absolutely no fund or there were no funds of National in the state of Mississippi. Now, reflecting on that a moment, would you not agree with me that that isn't necessarily true for as new members come in and before there are transmittals or remittals to National, half of that money of the membership belongs to you in the National, doesn't it?

A Yes, I would say that's true.

Q And you really don't know from day to day how much you've got in the state in these bank accounts that may be in the name of the branch but as to which you have a right to 50 percent by virtue of your membership. Isn't that right?

A That's true, yes.

Q Now, the entire operation in Mississippi, as I understood your testimony, the cost of it is borne by National.

A Just about, yes.

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SUPREME COURT OF THE UNITED STATES

No. 81-202

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*

ORDER ALLOWING CERTIORARI

Filed November 9, 1981

The petition herein for a writ of certiorari to the Supreme Court of the State of Mississippi is granted. The case is set for oral argument in tandem with case No. 81-280, *General Building Contractors Association, Inc.* v. *Pennsylvania* and related cases. Justice Marshall took no part in the consideration or decision of this petition.

FILED
OCT 15 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-202

In the Supreme Court of the United States

October Term, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,
Petitioners,

VS.

CLAIBORNE HARDWARE COMPANY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

RESPONDENTS' BRIEF IN OPPOSITION

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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Claiborne Hardware Company, et al., respectfully request that this Court deny the Petition for Writ of Certiorari, seeking review of the Mississippi Supreme Court's opinion in this case.

STATEMENT OF THE CASE

Respondents[1] are small-town merchants who sued Petitioners in state court for damages resulting from unlawful conspiracy to destroy their businesses by boycott and for injunctive relief from tortious interference with business. The trial court, after an eight-month trial, awarded damages and injunctive relief.[2] On appeal to the Mississippi Supreme Court, liability was affirmed as to Petitioners, reversed as to other Defendants and the amount of damages, and remanded for trial on the issue of damages only.

Respondents are Caucasian individuals and Caucasian-owned corporations in Port Gibson, Claiborne County, Mississippi. In the County surrounding the Town three-fourths of the citizens are Black. At the instance of Petitioner NAACP, in 1966, a boycott began at a time when Blacks had obtained overpowering authority at the ballot box in Port Gibson. In the 1967 election they could easily have put members of their ranks in practically all of the County's elective offices. App. A at 8a.

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1. Claiborne Hardware Company, Inc.
   Q. H. McDaniel, Jr., d/b/a McDaniel Pharmacy
   James E. Hudson and George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store
   Waddy Abraham, d/b/a Jitney Jungle
   Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store
   Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store
   Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria
   Port Gibson Lumber & Supply Company, Inc.
   W. H. Hay, d/b/a O.K. Cleaners & Shirt Laundry
   Charles R. Dobbs, d/b/a Western Auto Associates Store Allen Motor Co., Inc.
   Mrs. Edgar A. McCaa, d/b/a Town & Country

2. The injunction is not before this Court since Petitioners have admitted its mootness. App. A at 5a. See p. 11, infra.

The boycott sprang from demands for political action from county and municipal authorities but the victims were Respondents who had no power to grant the demands. Ironically, the boycott was unnecessary because of the collective voting power of Blacks in the County, including most of the Petitioners.

In 1966 a group led by Charles Evers, Field Secretary for the NAACP, addressed two letters, dated March 14 and March 23, containing demands[3] which were generally for desegregation of the local police force, equal city facilities in Black residential areas, employment of Black attendants in all stores and appointment of Blacks to positions of authority in the community. These letters were addressed to the Mayor and Board of Aldermen, the Claiborne County Board of Supervisors, the Board of Education and Sheriff, and to the Chamber of Commerce. The letters' signatories included several Petitioners.[4]

When the demands were not met within the next fourteen days the boycott of Respondents' businesses began, organized and led by Charles Evers, Field Secretary of the NAACP.[5] That organization met weekly in a church

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3. The demands are listed in Appendix A at 10a-12a. The preamble to the first letter recognized that Blacks constituted a majority of the registered voters in Port Gibson and Claiborne County. App. B at 8b.

4. Alexander Collins, Charles Evers, Walter L. Griffin, Sr., Mack Tisdale and Calvin Williams. Pet. 2.

5. "The individual Defendants who were members of the NAACP, and who testified, approved of the demands made upon the public officials, and the evidence shows that they agreed to, and did participate in, the boycott by withdrawing and withholding their trade and patronage from the white merchants. *However, none of these witnesses testified that he or she had a personal dispute with any white merchant in Claiborne County.* None of these witnesses testified that he or she ever asked for or sought a job from any white merchant; nor did any of these witnesses represent any other black person who was seeking a job." App. B at 18b. (Emphasis added).

whose pastor was one of the signatories of the demand letters to the political leaders. Later, in 1969, the church would be found concealing a number of weapons. App. A at 14a. The boycott was accompanied by marching, speeches, and picketing. An accompanying enforcement group of store watchers, designated by the NAACP (App. B at 17b), consisting of almost 50 men called the "Black Hats", was organized in May 1966, several of whom are Petitioners.[6] The testimony revealed that the "Black Hats" were a quasi-military group. Quoting extensively from the trial court's opinion, the Court noted:

> The Chancellor rendered an able, detailed, analyzing opinion, fully covering the voluminous testimony. His portrayal, well supported in the record, presents a facet of the enforcement of the boycott:
>
> > The thread of fear and violence is woven throughout this case. Sheriff McKay testified that many times black people who wanted to trade with whites appealed to him for protection. He said at least 100 blacks complained to him that they had been interfered with when attempting to trade with white merchants. He said that when the "store watchers" relaxed the boycott would "loosen up", ...
> >
> > Very shortly after the boycott started, Sheriff McKay was near Hudson's Store when he noticed a group of black people gathered around a car parked in front of the store. McKay approached the crowd and said he heard the [Petitioner] Calvin Williams tell a black man named Darden that he (Darden) could not go into the

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6. Alonzo Atlas, Calvin Bailey, Robert Butler, Jim Ellis, Jr., Nathaniel Jones, Elmo Scott, Rudolph Shields, George Walker, James Whitney. See App. B at 19b-20b.

store because it was under boycott. McKay intervened, whereupon, he said, he heard Calvin Williams say to Darden: "You can go in, but the Sheriff here isn't going to sleep with you at night." Darden did not go into the white store.

James Gilmore, a black man, ignored the boycott. On the night of August 22, 1966, Gilmore's home was shot into. [Petitioner] Elmo Scott, Jr., a member of the NAACP and of the "Deacons", together with two other young black men, [Petitioner] Calvin Bailey and [Petitioner] James Whitney, were arrested for this act and were convicted. The Mississippi Supreme Court reversed and remanded the case, [citation omitted] because of exclusion of Negroes from the grand jury. On retrial the jury was unable to agree. At the time of the trial, these people had not been retried.

[Petitioner] Rudolph J. (Rudy) Shields, formerly of Chicago, was the principal figure in several altercations. He boasted that he was the "most jailed person in the Claiborne County boycott." This man was the acknowledged leader of the "Deacons." Laura Cullens testified that she lived about a quarter-mile from the city limits of Port Gibson on Highway 18. She refused to join the NAACP, and she ignored the boycott. Her name, among many others, was called out at the NAACP meetings, and she was derisively referred to as an "Uncle Tom." She was vilified and abused. In November 1966 shotgun pellets were fired into her home.

Muriel Cullens, a son of Laura Cullens, did not observe the boycott and was the target of harrassment by blacks. Cullens' car was run into and

badly damaged, and a brick was thrown through the windshield.

In April 1966 soon after the boycott was started, Johnny Cox, a black man, and his wife were stopped by "store watchers" who attempted to prevent Mrs. Cox from going into the O. K. Cleaners, a white-owned business, to get some clothing. They had to get police protection in order to go into this cleaning establishment. About a week later, shotgun blasts were fired into the Cox home near Hermanville. Pistol shots were fired at Cox.

[Petitioner] James Bailey, a 200-pound ex-football player testified regarding his activities as a "store watcher". He was instructed to stop any black person he saw about to enter a white business house. He said that he had been a "bad boy" and had been convicted for molesting a child, resulting in sentence to the State Penitentiary. He was instructed to take the name of any black person going into a white-owned business and report same to Defendant Pete Gusta. On one occasion, he stopped Willie Butler, an elderly black female whom Bailey referred to as "Nig" Butler, as she was going into the Piggly-Wiggly Store. Despite his warnings, she went into the store and purchased some items of groceries. He watched her house and saw groceries delivered there by a white-owned store. He instructed her to stop trading with whites, whereupon she told him she would trade with whom she pleased. Bailey went into this elderly woman's yard and destroyed her flower garden by way of punishing her.

There is evidence in the record that an elderly black man called "Preacher" White (deceased at

the time of trial) was stripped of his clothing and whipped by a group of young blacks because he refused to honor the boycott.

Eddie Lewis, a black man, refused to join the NAACP and refused to honor the boycott. He was warned by [Petitioner] Rudolph Shields to stay out of white-owned stores. Lewis purchased a bottle of whiskey at a white-owned liquor store, and was observed by Alfred Lee "Fats" Davis, a NAACP member and activist in the black boycott. Davis took the whiskey away from Lewis and denounced him in highly uncomplimentary language for dealing with white people.

Willie Myles testified that he refused to stop trading with white stores. His name was read out at NAACP meetings as a "boycott breaker." He said he received threatening telephone calls. On one occasion, the Port Gibson police had to give him an escort when a carload of young blacks began following him. He received a warning that he was going to be whipped for buying gasoline at a white-owned service station.

Jasper Coleman, a black man, testified that he did not join the NAACP and continued to trade with white merchants after being warned by [Petitioner] Walter Griffin and [Petitioner] Calvin Bailey. The tires on Coleman's automobile were slashed.

Emerson Davis, a black commercial fisherman, testified that he refused to join the boycott. He testified that [Petitioner] Rudolph Shields, [Petitioner] Jimmy Ellis and three other blacks grabbed him, carried him down a street and beat him. He was

> denounced as an "Uncle Tom." He said that he received threats on his life. [Petitioner] James Bailey told him that he was going to kill him (Davis).
>
> Unquestionably, the word "got around" in Port Gibson and Claiborne County that physical harm as well as vilification and ostracism, could very well be the lot of any black person observed trading with whites. As a matter of fact, these things were promised by the Field Secretary of the National NAACP, Charles Evers, on at least two occasions, and it is apparent that the black people believed him. This NAACP-sponsored boycott was a definite success insofar as economic damage to the white merchants was concerned, even though the victims—the white merchants—had no power to grant the demands made on the county and municipal authorities. App. A at 13-16a.

These so-called "few acts of hooliganism" (Pet. 8) exemplify the methods used by Petitioners to enforce the boycott. Indeed they were foreshadowed by Petitioner Charles Evers when he promised in a nationwide television speech, "If we catch you going in any of them racist white stores, we're gonna break your . . . neck." App. A at 19a.

Based upon an adequate search of the record (App. A at 26a) the Mississippi Supreme Court dismissed 38 Defendants for lack of or insufficient proof, affirmed as to liability of all Petitioners based upon common law conspiracy, reversed the amount of damages for insufficient proof and remanded for retrial of damages only. Although the trial court issued an injunction, which Petitioners assign as error, their brief and oral argument waived objection to it in the court below and they are precluded from asserting it as error here.

The lower court's affirmation of liability was not grounded on a federal question but upon the common law of civil conspiracy and violation of a criminal statute.[7] App. A at 24a. *Southern Christian Leadership Conference v. A. G. Corp.*, 241 So.2d 619 (Miss. 1970) and *Southern Buslines, Inc. v. Amalgamated Association of Street, Electric Railway and Motor Coach Employees*, 38 So.2d 765 (Miss. 1949) were determinative of the issues.

SUMMARY OF ARGUMENT

The Court lacks jurisdiction for failure of Petitioners to file for certiorari on liability within 90 days, as required by 28 U.S.C. §2101(c), and the injunction involved is moot, as admitted in the court below. Thus there is no jurisdiction to entertain the Petition.

The decision below assigned liability for common law civil conspiracy and rests upon adequate state grounds. The violence which initiated and sustained the boycott against innocent merchants is not protected by the First Amendment under the guise of freedom of speech or association. Neither is the boycott shielded by calling it "political" since it was enforced by violence against innocent merchants who had no power to grant political demands underlying the boycott.

The record facts from an eight-month trial were adequately analyzed before assigning liability and this case is therefore not in conflict with prior decisions of the Fifth

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7. If any person shall in any manner threaten with bodily harm, intimidate or coerce another person to prevent said person from lawfully trading, or carrying on business, including buying or selling, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year in the county jail or be fined not more than one thousand dollars ($1,000.00), or both. Miss. Code Ann. §97-23-83 (1972).

Circuit distinguishing the controlling authority, *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941), on its facts.

JURISDICTION

Lack of Jurisdiction and Reviewability

Petitioners attack the judgment below on both liability and the injunction but neither is preserved or properly presented to this Court.

The issue of liability has not been brought to this Court by Petition for Certiorari, or otherwise, within 90 days as required by 28 U.S.C. §2101(c). The judgment of the Mississippi Supreme Court assigning liability to Petitioners was entered December 10, 1980. A timely Petition raising liability was thus due in this Court March 10, 1981 unless a Petition for Rehearing below on the issue of liability extended the time to seek certiorari. A Petition for Rehearing was filed January 24, 1981 suggesting error as to the injunction, but not liability. This default cannot be saved by Petitioners' claim that their Petition for Rehearing with the lower court extended the time to file here on all issues. That Petition for Rehearing did not suspend the 90 day requirement of 28 U.S.C. §2101(c) as to issues not included therein. Therefore, liability was finally determined on December 10, 1980. The issue of liability was never raised by Petition for Rehearing, or otherwise, between December 10, 1980 and July 31, 1981. This flaw is fatal to jurisdiction.[8] See *Conboy v. First National*

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8. Cf., *Dept. of Banking v. Pink*, 317 U.S. 264, 266 (1942) (Failure to request alteration of rights adjudicated does not suspend finality of judgment so as to extend time for petitioning for certiorari.)

Bank, 203 U.S. 141, 145 (1906) and certiorari is not available since no error as to liability was asserted.[9]

The injunction issued by the trial court is not before this Court because it is moot and Petitioners waived objection to it in the Mississippi Supreme Court. The opinion below noted that, "Although the granting of injunction has been assigned as error, the error has not been argued and [Petitioners] say, at the conclusion of their brief '". . . the injunctive aspects of the case are now moot . . . ."'" App. A 5a. In oral argument below on September 4, 1980, Petitioners' counsel stated that the injunctive issue was moot because the boycott activity had long since stopped and the chancellor's findings were unsatisfactory that the boycott was still going on.[10] This Court will not pass on the validity of an injunction that has terminated or already served its purpose. *DeFunis v. Odegaard*, 416 U.S. 312, 317-20 (1974); *Sears, Roebuck and Company v. Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers Local 419*, 397 U.S. 655, 657-58 (1970). For failure of jurisdiction, the Petition for Certiorari must be denied.

OTHER REASONS FOR DENIAL OF CERTIORARI

Beyond the jurisdictional defects, there are numerous reasons why certiorari would be inappropriate. To begin with, Petitioners misstate the record facts in their conclusory assertion that the boycott was voluntary and it was not fear that made the boycott effective. Pet. 19. Petitioners' own co-appellant conceded in the court below[11]

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9. Miss. Sup. Ct. Rule 14 provides that any party asserting that an error of law or fact was committed may file a Petition for Rehearing.

10. Likewise, Petitioners' Petition for Rehearing concedes that the boycott is over. App. H at 5h.

11. See Brief of Appellant MAP at 21:

"Despite the efforts of local law enforcement . . . violence to those who broke the boycott continued to be a way of life in Port Gibson and Claiborne County."

that it was fear which made the boycott effective. That court adopted the chancellor's opinion, well supported in the record, in finding that " 'The thread of fear and violence is woven throughout this case.' " App. A 15a.

Petitioners ask this Court to review three questions which they contend are raised by the Mississippi Supreme Court decision. As demonstrated supra,[12] no jurisdiction exists to hear these questions. But even if it did, none of the three questions asserted by Petitioners is actually presented by this case. Moreover, even if the questions were squarely presented, Petitioners have advanced no reasons why this Court need consider them. Petitioners allege no conflict among the Circuits on these questions. They show no departure from this Court's decisions in the lower court's resolution of the asserted questions, nor any justification for this Court to overrule its precedents which control those questions. They make no demonstration that the peculiar facts giving rise to the questions will often, if ever, confront other lower courts. Finally, Petitioners fail to consider that the questions, even if otherwise worthy of review, are not timely raised.

Petitioners essentially ask this Court to decide whether participants in a boycott accompanied by speeches, marches and picketing, as well as incidents of criminal activity by "some" participants can constitutionally be permanently enjoined from boycotting and conducting "protected" First Amendment activities. This question can exist only when the record facts are misstated.

The record clearly shows that a reign of terror was the force which sustained this boycott. If it were voluntary as Petitioners suggest, why was the violence used in its enforcement necessary? How could the record support at

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12. See pp. 9-11.

least eighty proven incidents of intimidation and violence?[13] The Mississippi Supreme Court found that the presence of a conspiracy was beyond peradventure. App. A at 23a. The asserted questions which Petitioners raise turn on the particular facts of this case alone and are of interest only to the parties to it. Petitioners ask the Court to make a third review of the lengthy trial record[14] to see if it can find what two previous courts have been utterly unable to find - proof that any of Petitioners' violent group activities were protected by the First Amendment. Such fact convassing is not the task to be served by a grant of certiorari; "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). Moreover in the realm of factual analysis and review, the rulings of the courts below are treated with and entitled to great weight. *Wolfe v. North Carolina*, 364 U.S. 177 (1960); *Watts v. Indiana*, 338 U.S. 49 (1949). The Petitioners raise only questions turning entirely on the facts of this case already resolved twice in favor of Respondents, and without any impact outside the limits of this case.

Finally, the decision below, based upon common law conspiracy and violation of a criminal statute, is a judgment that rests on adequate and independent State grounds and this Court will not review such a judgment. *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945).

1. Petitioners first ask this Court to decide the constitutionality of the injunction. As discussed infra, that

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13. Some of the more conspicuous record testimony relating to violent acts, threats of violence and intimidation are summarized in App. I. Of the numbered incidents over two dozen are directly tied to 14 Petitioners before this Court. Compare *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 at 294 (1941) (over one dozen instances tied to group members).

14. 16,200 pages in 95 Volumes.

is not before this Court. But even if it were Petitioners have demonstrated that it is emasculated by stay of the Fifth Circuit Court of Appeals[15] and cannot, as they claim, have a chilling effect.

It is myopic to claim that this boycott is in the mainstream of the Civil Rights movement. The fundamental distinction between those boycotts which may be protected political activities and this is that they were not scapegoat boycotts tainted by a conspiracy to commit violence. It does not help to claim that only some of the means are violent, for when they are, the peaceful ones may be restrained as well. *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 294 (1941). Simply stated, such a boycott is illegal and enjoys no constitutional protection.[16]

The assertion that this Court has never decided how the First Amendment applies in the context of political boycott activity misses the mark for three reasons: (1) this boycott was only against innocent merchants,[17] not the community political leaders, (2) only legal boycott activity merits First Amendment protection and (3) the asserted question has never merited review by this Court.[18]

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15. See *Henry v. First National Bank*, 424 F.Supp. 633 (N.D. Miss. 1976), aff'd, 595 F.2d 291, 301 (5th Cir. 1979), cert. denied, 444 U.S. 1074 (1980).

16. *Hughes v. Superior Court*, 339 U.S. 460 (1950); See Note, *The Common Law and Constitutional Status of Anti-Discrimination Boycotts*, 66 Yale L.J. 397 at 399 (1957):

> As order is a prime objective of the law, boycotts furthered by violence are always illegal. [Citations omitted].

See, also, Comment, *The Consumer Boycott*, 42 Miss. L.J. 226 at 231 (1971).

17. ". . . none of these witnesses testified that he or she had a personal dispute with any white merchant in Claiborne County." App. B at 18b.

18. See *Rouse Philadelphia, Inc. v. Ad Hoc '78*, 417 A.2d 1248 (Pa. Super. Ct. 1979), cert. denied, 449 U.S. 1004 (1980)

(Continued on following page)

Petitioners consistent understatement of the violence proven in the record is done for obvious rhetorical reasons. The thread of fear and violence woven throughout the boycott is amply demonstrated in the decision below (App. A at 15a-20a) and in the record.[19] Such a saturation level of violent activities warranted forfeiture of what might have been First Amendment protection.[20] Thus, on the facts presented, the stated question is both abstract and academic and this Court does not give decisions to satisfy scholarly interest nor for the benefit of particular litigants. *Rice v. Sioux City Cemetery*, 349 U.S. 70 (1955).

The decision below is claimed to be in conflict with the Fifth Circuit Court of Appeals decisions in *Henry v. First National Bank*, 595 F.2d 291 (5th Cir. 1979), cert. denied, 444 U.S. 1074 (1980) and *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969). In fact, those decisions fully support the decision below.

Henry involved a procedural question as to whether a preliminary injunction issued by a district court, staying enforcement of the state court judgment met the requirements for issuance.[21] The *Henry* court had *no* record facts before it and did not consider this case on its merits. Likewise in *Machesky*, as the Fifth Circuit stated, there was *no*

Footnote continued—

(violence used in boycott of merchants who had no authority over allocation of government funds not protected by First Amendment); Compare *N.A.A.C.P. v. Overstreet*, 142 S.E.2d 816 (1965), cert. dismissed as improvidently granted, 384 U.S. 118 (1966) (per curiam) (5-4).

19. See n. 13, supra.

20. *N.A.A.C.P. v. Overstreet*, supra, 142 S.E.2d at 824 (1965), cert. dismissed as improvidently granted, 384 U.S. 118 (1966) (per curiam) (5-4).

21. See, *Morgan v. Fletcher*, 518 F.2d 236 (5th Cir. 1975).

record even approaching the level of violence found in this case. Indeed, the Fifth Circuit has consistently followed *Meadowmoor* in noting "any kind of boycott is unlawful if executed with force or violence or threats. . . ." *Smith v. Grady*, 411 F.2d 181, 187 (5th Cir. 1969).[22] The decision below was compelled by the facts, ordered by the law and plainly is aimed at the State's interest in order.[23] No reason is offered why this Court should abandon that law nor why this case is an appropriate vehicle for such abandonment. Petitioners' assigned question should not be entertained.

2. Petitioners next ask this Court to review the facts of this case and reverse the lower court's reliance on *Meadowmoor*, claiming that this decision conflicts with the Fifth Circuit's decision in this case. The stated question is simply not presented here and does not merit review. Even if it were squarely presented, all Petitioners ask is for this Court to review the record and conclude what two courts have been utterly unable to do after reviewing over 16,000 pages of testimony - that *Meadowmoor* is inapplicable.

Juxtaposition of the record facts in this case and *Meadowmoor* amply demonstrate it to be compelling authority:

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22. "We are not unmindful that utterance in a context of violence can lose its significance as an appeal to reason and become an instrument of force. Such utterance was not meant to be sheltered by the Constitution." *Smith*, supra 411 F.2d at 189.

23. See note 16, supra.

Meadowmoor, 312 U.S. at 291-92 and n. 1	*This Case*, App. A, B and I, *passim*
1. Window smashing	1. Window smashing (17a)
2. Explosive bombs	2. Damaged vehicle (36b-37b)
3. Wrecked vehicles	3. Man stripped and beaten (17a)
4. Burning of store	4. Carload of men following (18a)
5. Persons beaten	5. Gunshots into home (17a)
6. Carloads of men following and threatening	6. Threats to life (18a)
7. Shots at truck drivers	

To claim that these acts were neither in the testimony nor tied to Petitioners' conspiracy betrays a fundamental naivete of record facts. The logical and inescapable result of Petitioners' argument will be to legitimize criminal activity when one has enough foresight to attach what is otherwise protected activity. This Court has never allowed the aegis of freedom to cloak tortious activity nor to immunize private warfare from legal interference.[24]

The decision below gave plenary consideration to the arrogation of constitutional claims below - and rejected them: "We know of no instance, and our attention has been drawn to no decision, wherein it has been adjudicated that the free speech guaranteed by the First Amendment includes in its protection the right to commit crime." App. A at 23a. The crime Petitioners claim went un-

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24. *Gompers v. Buck's Stove and Range Company*, 221 U.S. 418 (1911). See generally, *Feiner v. New York*, 340 U.S. 315 (1951) and Teller, *Picketing and Free Speech*, 56 Harvard L.R. 180 (1942). See also cases cited note 16, supra.

identified is common law conspiracy, which enjoys no First Amendment immunity. *Giboney v. Empire Ace Storage and Ice Company,* 336 U.S. 490, 502 (1949).

The claim that the Mississippi Supreme Court's decision is unprecedented and unwarranted, presenting an important First Amendment question, is without merit. The lower court clearly based its decision upon precedent of this Court and others.[25] The implication that application of *Meadowmoor* to this case, or any other non-labor case (Pet. 17) is improper, is without basis in fact or law. This Court has never limited the principles of *Meadowmoor* to labor cases, has never retreated from its principles or limited it to its facts. This is one of those ". . . special limited circumstances in which speech is so interlaced with burgeoning violence that it is not protected by the broad guarantee of the First Amendment."[26]

Petitioners' question, whether *Meadowmoor* is even applicable to political boycotts, fails to acknowledge that Respondents are not politicians capable of granting any civil and political reforms. Fundamentally, therefore, by its nature this is not a political[27] boycott and the law of *Meadowmoor* controls.

Petitioners contend the record fails to support application of *Meadowmoor* to these facts. Careful review by two courts below found that this violence was neither episodic nor isolated, nor was it merely peppered with "a trivial rough incident or a moment of animal exuberance," 312

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25. App. A at 20a-23a and authorities therein.

26. *Carroll v. President and Commissioners of Princess Anne,* 393 U.S. 175, 180 (1968) (reaffirming principle of *Meadowmoor* by specifically refusing to challenge it); *Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942).

27. The dictionary definition of "political" relates to the "making as distinguished from the administration of governmental policies." See Webster's Seventh New Collegiate Dictionary 657 (1965).

U.S. at 293. Petitioners say application of *Meadowmoor* is limited to cases where a finding is made that an injunction would be ineffective if picketing were resumed. (Pet. 18) The chancery court found the thread of fear and violence woven throughout this case and an atmosphere of fear (App. B at 34b-35b) when it found the Respondents entitled to a permanent injunction and enjoined picketing because it "ha[d] been conducted against a background of violence" App. B at 68b. That finding fully comports with the requirement that a finding be made "that an injunction would be ineffective if picketing were resumed."[28] The requirements of *Meadowmoor*, as interpreted by *Youngdahl*, were strictly observed and their purposes fully achieved.

Petitioners' contention that the Fifth Circuit refused to apply *Meadowmoor* to this case is correct but the distinguishing reason is found in the very words of that Court that there was not a level of violence as in *Meadowmoor* ". . . at least on the record before the District Court." 595 F.2d at 304. The statement that there was no insufficiency in that record (Pet. 19, n. 36) is simply not true. The Fifth Circuit acknowledged it had no record before it nor was an opportunity to make a record available in the District Court because that merely involved the issuance of a preliminary injunction.[29]

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28. See *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 at 139 (1957); *Cafeteria Employees Local 302 v. Angelos*, 320 U.S. 293 (1943).

29. In the District Court [Respondents] pointed out that the Court was not then sitting in review of the facts underlying the State Court injunction but only considering the enjoining of enforcement of the collection of monetary damages. The District Court stated:

> I agree, and I am not asked to do that in this proceeding . . . . I am not going to enter into an argument on the merits of the case. I am just dealing with the limited and narrow subject of whether or not these people have the right to a decision of the merits on appeal all the way up . . . ." App. J at 1j-2j.

Petitioners ask the Court to make an independent review of the 16,200 pages of testimony to insure that *Meadowmoor* is not misapplied. That is not the purpose of this Court. *United States v. Johnston*, 268 U.S. 220 (1925). The cited authorities are inappropriate[30] and recognize that, "Even where a question of fact may have constitutional significance we normally accord findings of state court deference in reviewing constitutional claims here." *Time, Inc. v. Firestone*, 424 U.S. 448, 463 (1976). The Courts below made the required conscientious effort in determining the existence of the critical fact - concerted agreed criminal activity - and appropriately assessed liability. Petitioners' asserted question should not be entertained.

3. Petitioners next ask the Court to consider whether liability can be imposed upon all boycott participants when "a small percentage"[31] of them engaged in unlawful acts. That broad question is simply not presented here. Thus, Petitioners' exaggerated "prophesy of nigh universal application of a constitutional precept so peculiarly dependent for its invocation upon appropriate facts" is unwarranted. *Burton v. Wilmington Park. Authority*, 365 U.S. 715, 726 (1961).

The citizens of Claiborne County were forced - not urged - to comply with the boycott; the boycott aims were not to alter prevailing governmental policies for they were not directed to governmental officials. This is the antithesis of the American freedom to boycott, peacefully conducted, to redress grievances with the government. Simply stated,

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30. See Pet. 20, n. 37 and authorities therein, all of which were premised on a failure, crucial to the holdings, of supporting record evidence. Here, there is ample evidence to support the decisions below.

31. "Virtually every Defendant testified that the blacks should continue the boycott until it was officially taken off by the NAACP." App. B at 34b. Where proof was insufficient, Defendants were dismissed. App. A at 26a.

criminal conspiracy is not shielded by the First Amendment.[32] "If the effect of the combination be evil, it will be condemned, no matter how praiseworthy its object may have been." *Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir. 1979), cert. denied, 449 U.S. 842 (1980).

The record flatly contradicts the denial of a central design.[33] The record violence was not merely incidental to Petitioners' "association." The court below found "the presence of a conspiracy beyond peradventure." App. A at 23a. That crime is a partnership where one acts for all and where even innocent protected acts are a step in a criminal plot, neither innocence nor the Constitution prevents punishment.[34] Participation in the conspiracy may be inferred from circumstantial evidence and a collocation of circumstances.[35] People who want to propagandize protests or views have no constitutional right guaranteed by the First Amendment to do so whenever, however, and wherever they please. *Greer v. Spock*, 424 U.S. 828 (1976). Petitioners' stated question does not warrant certiorari.

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32. "[I]t has never been deemed on abridgment of freedom of speech . . . to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed. [Citations omitted.] Such an expansive interpretation of constitutional guaranties of speech . . . would make it impossible ever to enforce laws against . . . conspiracies deemed injurious to society." *Giboney v. Empire Ace Storage and Ice Company*, 336 U.S. 490, 502 (1949).

33. The boycott was instituted at the instance of the NAACP and conducted with planning and expertise in control. App. A at 13a.

34. See *United States v. Feola*, 420 U.S. 671 (1975); *Aikens v. Wisconsin*, 195 U.S. 194 (1904); *United States v. Socony-Vacuum Oil Company*, 310 U.S. 150 (1940).

35. *Glasser v. United States*, 315 U.S. 60 (1942).

This is a simple case of faulty jurisdiction and of a record that fails to sustain any alleged invasion of Petitioners' constitutional rights. Its very uniqueness precludes review by this Court.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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October 15, 1981

APPENDIX

APPENDIX "I"

1. General testimony relating to the physical stopping of people from patronizing boycotted stores and destruction of goods purchased:

James Hudson	R-637
James Hudson	R-664
James Hudson	R-667
James Hudson	R-789
James Hudson	R-794-806
James Hudson	R-811-812
James Hudson	R-812
Joe Ellis	R-925
Joe Ellis	R-936
Barbara Ellis	R-1188-1190
Barbara Ellis	R-1198-1199
Calvin Williams	R-1580
Charles Dobbs	R-14788
Chancery Court Opinion	R-16310
Elmo James Scott, Jr.	R-2873
Elmo James Scott, Jr.	R-2996
Elmo James Scott, Jr.	R-3025-3028
James Whitney	R-3590-3591
James Bailey, Jr.	R-3693-3696
McLawrence Bailey	R-4058-4060
McLawrence Bailey	R-4065
Marcus Jones	R-10215-10219

2. General Threats to Merchants:

James Hudson	R-688

3. General threats and acts of violence against blacks:

James Hudson	R-784-789
James Hudson	R-789-791
James Hudson	R-810
James Hudson	R-812
Joe Ellis	R-875
Joe Ellis	R-936-938
Joe Ellis	R-940-941
Barbara Ellis	R-1199
Elmo James Scott, Jr.	R-2996-2997
Horace Lightfoot	R-7153
Horace Lightfoot	R-7154
Rev. R. L. T. Smith	R-15311
Owen Cooper	R-15377-15379
Owen Cooper	R-15381-15382
Owen Cooper	R-15384-15388
Burnell Monroe	R-15433-15434
Julia Johnson	R-15474-15476
LeRoy Percy	R-15555
LeRoy Percy	R-15583
James Hudson	R-14711
Charles Dobbs	R-14825

4. General appeals for help to Sheriff and Police Chief, principally by blacks:

Sheriff Dan McKay	R-1377
Chief Rodney Porter	R-2128
Chief Rodney Porter	R-2137
Chief Rodney Porter	R-2168

5. Calvin Williams and others attempting to stop Earnest Darden from trading at Piggly Wiggly and to intimidate him:

James Hudson	R-647-48
James Hudson	R-810

James Hudson	R-869
James Hudson	R-880
Sheriff Dan McKay	R-1016
Calvin Williams	R-1414-1415
James Hudson	R-14711-14712
Chancery Court Opinion	R-16329

6. Black hats drilling with weapons:

James Hudson	R-653-61
James Hudson	R-822-828
James Hudson	R-871
Calvin Williams	R-1411
Chancery Court Opinion	R-16311-16312
James Charles Evers	R-4713-4714
Elmo James Scott, Jr.	R-2955-2956
James Whitney	R-3299
James Whitney	R-3454

7. Rudy Shields and others hitting Williams Holt in April or May of 1966:

James Hudson	R-661-665
James Hudson	R-815-816
James Hudson	R-14712

8. Blacks saying, "When you are down at the store tonight, I will go to see you wife" when told or made to move from merchant's doorways:

James Hudson	R-665-75

9. Marcus Jones grabbing James Hudson's daughter and saying, "Come, and go with me.":

James Hudson	R-675

10. Rudy Shields hitting and cursing two customers of Mrs. Bearden's and taking and destroying their groceries:

James Hudson	R-811-812
Sheriff Dan McKay	R-1379-1380
Sheriff Dan McKay	R-1388

11. James Bailey going to woman's home and threatening her if she continued to violate boycott:

James Hudson	R-817

12. Fires after deaths of Martin Luther King, Roosevelt "Dusty" Jackson and at the time of 1967 elections:

James Hudson	R-834-837
Nathaniel H. Jones	R-1905
Chief Rodney Porter	R-3056
LeRoy Percy	R-15547
Chancery Court Opinion	R-16318
James Charles Evers	R-4737-4738
Elmo James Scott, Jr.	R-2948
James Whitney	R-3551
James Bailey, Jr.	R-3719
Horace Lightfoot	R-7188-7189
Marcus Jones	R-10393

13. Rudy Shields threatening Lee Allen, Jr.:

James Hudson	R-869

14. Dee Smith trying to take Roosevelt Wyatt's package:

James Hudson	R-869

15. Windows broken at Piggly Wiggly after march:

James Hudson	R-895-97

16. Roosevelt "Dusty" Jackson shooting:

James Hudson	R-898
Sheriff Dan McKay	R-1026
Nathaniel H. Jones	R-1908
Chief Rodney Porter	R-2055-2066

Walter Griffin, Sr.	R-2634-2639
James Allen	R-15088-15090
Chancery Court Opinion	R-16318
James Charles Evers	R-4782-4783
Aaron Henry	R-4894
James Whitney	R-3552
James Bailey, Jr.	R-3671-3680
McLawrence Bailey	R-3963-3964

17. Charles Evers' April 1966 speech in which he was reported to have told violators of the boycott that their own people would break their necks:

Sheriff Dan McKay	R-1015
Sheriff Dan McKay	R-1131-1132
Nathaniel H. Jones	R-1723
Charles Dobbs	R-14788
Chancery Court Opinion	R-16308-16309
James Charles Evers	R-4687
Elmo James Scott, Jr.	R-2755
Marcus Jones	R-10393

18. Charles Evers' April 1969 speech in which he was reported to have said, "If we catch any of you going in any of them racist stores, we're going to break your damn neck.":

Walter Griffin, Sr.	R-2660
Robert Vaughn	R-15200-15202
Gloster Current	R-15711-15712
Chancery Court Opinion	R-16320
James Charles Evers	R-4684-4687
James Charles Evers	R-4758-4759
Elmo James Scott, Jr.	R-2964
McLawrence Bailey	R-3965

19. Shooting into Cox home:

Sheriff Dan McKay	R-1021-1025
Sheriff Dan McKay	R-1119
Sheriff Dan McKay	R-1377
Julia Jones	R-6448
Johnny Cox	R-13631-13633
Johnny Cox	R-13661
Susie Cox	R-13696
McLawrence Bailey	R-4011-4013, 4019
McLawrence Bailey	R-4055-4056
Chancery Court Opinion	R-16331

20. Blacks pushing police chief's car into another car:

Sheriff Dan McKay	R-1029
Chief Rodney Porter	R-2066
Chief Rodney Porter	R-2100

21. Rocks thrown at cars:

Sheriff Dan McKay	R-1029
Chancery Court Opinion	R-16319

22. Shooting at First Baptist Church after Dusty Jackson shooting, discovery of weapons in organ, shooting of policeman and Jim Holt, beating of Horace Lightfoot:

Sheriff Dan McKay	R-1030
Sheriff Dan McKay	R-1144-1146
Sheriff Dan McKay	R-1374
Calvin Williams	R-1550
Nathaniel H. Jones	R-1908-1911
Chief Rodney Porter	R-2069
Chief Rodney Porter	R-2118-2123
Walter Griffin, Sr.	R-2639-2644
Rev. Jim Holt	R-7874-7881
Rev. Jim Holt	R-7920-7922
Johnny Shorter	R-13856-13858

Johnny Shorter	R-13863-13864
Charles Dobbs	R-14798
James Allen	R-15090
Chancery Court Opinion	R-16319
James Charles Evers	R-4777-4781
James Charles Evers	R-4783-4784
James Charles Evers	R-4789-4791
Geneva Collins	R-3162-3165
Geneva Collins	R-3173
Geneva Collins	R-3182-3183
James Whitney	R-3290
James Whitney	R-3628
James Bailey, Jr.	R-3665-3670
James Bailey, Jr.	R-3744-3750
James Bailey, Jr.	R-3751-3763
McLawrence Bailey	R-3954-3958
McLawrence Bailey	R-3960-3962

23. Borden Milk Truck tires slashed at Addison High School:

Sheriff Dan McKay	R-1066-1067
Albert Weathers	R-5138-5139
Marvin Hynum	R-13806-13817
Johnny Shorter	R-13833-13841
McLawrence Bailey	R-4060

24. Shooting into James Gilmore home by Elmo Scott, Calvin Bailey and James Whitney:

Sheriff Dan McKay	R-1120
Sheriff Dan McKay	R-1379
Nathaniel H. Jones	R-1739-1743
Chief Rodney Porter	R-2078-2080
Chief Rodney Porter	R-2136-2137
Albert Weathers	R-5134
Julia Jones	R-6447

James Gilmore	R-13706-13725
Jimmy Ellis	R-8939
Charles Dobbs	R-14798
Charles Dobbs	R-14806
Chancery Court Opinion	R-16329
James Charles Evers	R-4826
Rudolph Shields	R-5023
Rudolph Shields	R-5050
Elmo James Scott, Jr.	R-2972
Elmo James Scott, Jr.	R-2987-2988
Elmo James Scott, Jr.	R-3019
James Whitney	R-3487-3488
James Whitney	R-3539-3542
James Whitney	R-3544-3550
McLawrence Bailey	R-3996-4004
Horace Lightfoot	R-7152

25. Olivia Parham's groceries taken and destroyed in front of George Ellis Food Store:

Barbara Ellis	R-1190

26. Rev. Mailes stopped from entering Ellis Variety Store:

Barbara Ellis	R-1200

27. Evers grabbing Mrs. Leroy (Susie) Gibson in front of Ellis Variety Store:

Barbara Ellis	R-1206-1207
Susie Gibson	R-14181-14186
Susie Gibson	R-14189
James Charles Evers	R-4694

28. Calvin Williams armed with machine gun or carbine:

Calvin Williams	R-1411

29. Rudy Shields, McLawrence Bailey, Alfred Davis and Eddie Wells taking tomato plant from woman from Jones Dollar Store and throwing it into trash:

Chief Rodney Porter	R-2050
Charles Dobbs	R-14791
Charles Dobbs	R-14807
Charles Dobbs	R-14830

30. Rudy Shields taking bread from Holsum's delivery man at Arthur Wyatt's Store and throwing it on the ground:

Chief Rodney Porter	R-2055
Chief Rodney Porter	R-2109-2110

31. Preacher White whipping by black youths:

Chief Rodney Porter	R-2176-2177
Chief Rodney Porter	R-2185
Alexander Collins	R-2259
Walter Griffin, Sr.	R-2660-2661
Jimmy Ellis	R-8943
Laura Collins	R-14006
Chancery Court Opinion	R-16331
James Bailey, Jr.	R-3696
James Bailey, Jr.	R-3735-3738
Marcus Jones	R-10209-10210

32. Preacher White threatened by Albert Weathers for buying gas for lawnmower at white service station:

Chief Rodney Porter	R-2178
Chief Rodney Porter	R-2189-2190

33. Wes Butler stopped by George Henry Walker from entering Auto-Lec Store:

Chief Rodney Porter	R-2178
Walter Griffin, Sr.	R-2661-2662

34. Rocks thrown at Marvin Hynum's milk truck:

Chief Rodney Porter	R-2179-2180

35. Henry Anderson assault and battery with deadly weapon upon Emerson Davis on April 6, 1966:

Sheriff Dan McKay	R-1380

36. Bottle of whiskey taken from Emerson Davis in 1968 by Rudy Shields and Alfred Davis:

Chief Rodney Porter	R-2050
Chief Rodney Porter	R-2107-2108
Chancery Court Opinion	R-16331-16332

37. Emerson Davis' automobile windshield broken and engine damaged in June or July of 1966:

Chief Rodney Porter	R-2167
Emerson Davis	R-13875

38. Rudy Shields, Calvin Williams, Jimmie Ellis and two other Black youths kicked and beat Emerson Davis and took Davis' gun, pocket knife, package and one dollar from him in the Fall of 1966:

Emerson Davis	R-13838-13870
Emerson Davis	R-13881-13883
Emerson Davis	R-13885
Emerson Davis	R-13920
Jimmie Ellis	R-8941
James Hudson	R-14720
Chancery Court Opinion	R-16332
Rudolph Shields	R-8020
Rudolph Shields	R-8021
Rudolph Shields	R-5057-5058
Rudolph Shields	R-5063-5064
Rudolph Shields	R-5065

39. Emerson Davis' life threatened by James Bailey and Rudy Shields:

Albert Weathers	R-5138
Emerson Davis	R-13865-13867
Emerson Davis	R-13878
Emerson Davis	R-13906
Emerson Davis	R-13967
Chancery Court Opinion	R-16332
James Bailey, Jr.	R-3657-3658
James Bailey, Jr.	R-3739
McLawrence Bailey	R-4066
Marcus Jones	R-10206-10207

40. Emerson Davis pulled a gun on McLawrence Bailey:

James Hudson	R-14720

41. Rudy Shields, Jimmie Ellis and three other black youths followed Emerson Davis until Davis went up to the house of J. D. Ross for help:

Emerson Davis	R-13865-13867
Emerson Davis	R-13878

42. Emerson Davis shot Williams Holmes' boy who had started at Davis with a knife after Rudy Shields had sent Holmes up to hold Davis until the others caught up with him:

Emerson Davis	R-13872

43. Walter Lee Woods' boys followed Emerson Davis to Miss Rosa Lee's Store:

Emerson Davis	R-13878

44. Susie Cox prevented from entering OK Cleaners and Johnny Cox threatened with bodily harm by Eddie Lee Wells:

Chief Rodney Porter	R-2075-2078
Chief Rodney Porter	R-2134
Julia Jones	R-6448
Johnny Cox	R-13627-13630
Johnny Cox	R-13660
Johnny Cox	R-13631
Susie Cox	R-13672
Susie Cox	R-13680
Susie Cox	R-13689
Susie Cox	R-13693
Chancery Court Opinion	R-16330
McLawrence Bailey	R-4057

45. Johnny Cox incident at filling station:

Chief Rodney Porter	R-2100

46. Burning of Johnny Cox's home:

Susie Cox	R-13687

47. Phone calls threatening physical harm received by Laura Cullins:

Julia Jones	R-6449-6450
Laura Cullins	R-13996-13997
Laura Cullins	R-13999-14002
Laura Cullins	R-14010
Laura Cullins	R-14016
Laura Cullins	R-14022-14025
Laura Cullins	R-14031
Murriel Cullins	R-14042

48. Laura Cullins' home shot into:

Sheriff Dan McKay	R-1021-1025
Chief Rodney Porter	R-2101
Chief Rodney Porter	R-2168
Chief Rodney Porter	R-2183
Alexander Collins	R-2259

Julia Jones	R-6449
Laura Cullins	R-13999-14001
Laura Cullins	R-14011-14014
Laura Cullins	R-14026-14028
Laura Cullins	R-14031
Murriel Cullins	R-14045-14046
Chancery Court Opinion	R-16330
Rudolph Shields	R-5018

49. Murriel Cullins' automobile windshield broken by brick while parked in front of Wolfe's store:

Chief Rodney Porter	R-2179
Laura Cullins	R-14004
Laura Cullins	R-14028
Murriel Cullins	R-14038-14041
Jimmie Ellis	R-8941-8942
Chancery Court Opinion	R-16330

50. Rocks thrown at Laura Cullins' house:

Julia Jones	R-6449
James Bailey, Jr.	R-3697-3698

51. Willie "Nig" Butler's flower garden destroyed by James Bailey:

Chancery Court Opinion	R-16331
James Bailey, Jr.	R-3654-3656
James Bailey, Jr.	R-3727
Marcus Jones	R-10214-10215

52. Willie Myles' wife receiving threatening phone calls:

Chancery Court Opinion	R-16332
Willie Myles	R-13754
Willie Myles	R-13773

53. Willie Myles threatened with whipping for buying gas at white-owned service station:

Chancery Court Opinion	R-16332
Willie Myles	R-13756
Willie Myles	R-13773-13778
McLawrence Bailey	R-4055

54. Willie Myles escorted by police when carload of young Blacks began following him:

Chancery Court Opinion	R-16332

55. Jasper Coleman's auto tires slashed:

Chancery Court Opinion	R-16332
Jasper Coleman	R-13782-13784
McLawrence Bailey	R-4057

56. House Rudy Shields stayed at shot into and he returned fire:

Rudolph Shields	R-5042-5044
Rudolph Shields	R-5050-5055

57. Two Black girls stopped a customer from entering OK Cleaners:

Rudolph Shields	R-14464

58. Roosevelt "Shorty" Wyatt threatened by "goons":

James Hudson	R-14711

59. Charles Dobbs' father charged with shoving girl on sidewalk:

Charles Dobbs	R-14787-14788

60. Customer of Western Auto Associate Store threatened after purchasing paint:

Charles Dobbs	R-14788
Charles Dobbs	R-14829

61. Customer of Jitney Jungle had groceries taken away:

Waddy Abraham	R-14913
Waddy Abraham	R-15000

62. Black woman who had her groceries torn out of her hand and was beaten:

Robert Vaughn	R-15208

63. Wolfe's store broken into several times and once set on fire and once robbed:

Murriel Cullins	R-14039-14040
Murriel Cullins	R-14055-14061
Murriel Cullins	R-14077-14082

64. Charles Davis' car windshield shot out with .22:

Charles Davis	R-6237

65. Charles Davis' car windshield broken by brick thrown through it while parked outside Danny Lee's cafe:

Charles Davis	R-6238-6239

66. Charles Davis' car back window shot out with larger caliber gun while parked in his yard:

Charles Davis	R-6238
Charles Davis	R-6240

67. Charles Davis' car set on fire in front of police station:

Charles Davis	R-6238
Charles Davis	R-6242
Charles Davis	R-6270
Julia Jones	R-6458-6459
Julia Jones	R-6473

68. Alfred (Dote) Shepard's car windshield broken:

Charles Davis	R-6256
Alfred Shepard	R-14178
McLawrence Bailey	R-4066

69. Alfred Shepard's car side window broken:

Alfred Shepard	R-14179

70. Eddie Lewis' whiskey taken by Alfred Lee Davis in Smith's Liquor Store:

Eddie Lewis	R-13742-13743
Rudolph Shields	R-5021

71. Arthur Neal got threatening phone calls:

Willie Myles	R-13770

72. Jimmie Ellis threatened by Klansman Jones:

Jimmie Ellis	R-8956
Jimmie Ellis	R-8967

73. Bill Martin beaten by the "NAACP":

Susie Cox	R-13676

74. White man named Jones pulled a gun on Rudy Shields, Alfred Lee Davis, Scott and others in Hermanville and put it to Shields and said he was going to kill Shields but didn't:

Rudolph Shields	R-5027-5033
Rudolph Shields	R-5039

75. Armaments of Black Hats:

Rudolph Shields	R-5051-5057
Rudolph Shields	R-5058
Elmo James Scott, Jr.	R-2861-2865
Elmo James Scott, Jr.	R-2952-2955

James Whitney	R-3307-3309
James Whitney	R-3432-3437
James Whitney	R-3622-3623
Marcus Jones	R-1022

76. Auxiliary police threatened to beat up Rudy Shields when he reported taking a gun away from Emerson Davis:

Rudolph Shields	R-5058

77. Rudy Shields received threatening phone calls and was abused on the street:

Rudolph Shields	R-5050

78. Willie Myles' house burned in Hermanville:

McLawrence Bailey	R-4054

79. Will Shaifer's automobile tires slashed:

McLawrence Bailey	R-4065

80. McLawrence Bailey altercation with Cooper woman when Bailey tried to stop her from entering store:

McLawrence Bailey	R-4088-4092
McLawrence Bailey	R-4074

APPENDIX "J"

The following record is from an earlier hearing in this case of October 8, 1976 before the District Court for the Northern District of Mississippi. *Henry v. First National Bank of Clarksdale*, 424 F.Supp. 633 (N.D. Miss. 1976).

MR. PYLES:

> You do not have jurisdiction to do that. Your Honor is not an appellate court from the Hinds County Circuit Court. That is the province of the Mississippi Supreme Court. And if that issue is to be reached it must be reached by going through the Supreme Court of Mississippi and then on up, if possible, to the Supreme Court of the United States.

THE COURT:

> I agree with you, and I am not asked to do that in this proceeding. I am only asked to enjoin the enforcement of this judgment, or the collection of this money, until the Mississippi Supreme Court has had an opportunity to act and the United States Supreme Court has had the opportunity to act.
>
> I am not asked in this proceeding to enjoin the Mississippi Supreme Court or the Chancery Court.

MR. PYLES:

> You were asked in this proceeding to enjoin a proceedings in the state court in there.

THE COURT:

> Correct.

MR. PYLES:

> And we say, Your Honor, you have no jurisdiction to do that, for the reason that the original com-

plaint filed in November of 1969 had no jurisdiction, and every order you issued subsequent to the filing of that is void for lack of jurisdiction. And the only way that these issues that you are raising here can be gotten to by any court is by going to the Supreme Court of the State of Mississippi.

THE COURT:

And waiting three or four years for the vindication of their rights?

MR. PYLES:

Beg pardon?

THE COURT:

And waiting three or four years for the vindication of their rights, unless they are in a position to put up a huge amount of money? I understand what your position is.

MR. PYLES:

Yes, sir. But, Your Honor, those complainants have waited four years before they even got started.

THE COURT:

I am not going to enter into an argument on the merits of the case. I am just dealing here with the limited and narrow subject of whether or not these people have the right to a decision of the merits on this case on appeal all the way up before they are compelled to surrender their right to peaceful picketing and expression of First Amendment rights. But I understand your position. . .

CERTIFICATE OF COURT REPORTER

I, B. L. HOLMAN, Official Court Reporter for the United States District Court, Northern District of Mississippi, hereby certify that the foregoing 112 pages constitute a true and correct transcript of the proceedings reported by me in the above-styled cause on October 8, 1976.

THIS, the 10th day of February, 1977.

s/ .....

B. L. Holman
Official Court Reporter

Office - Supreme Court, U.S.
FILED
OCT 29 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-202

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Mississippi

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REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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October 29, 1981

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Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Mississippi

---

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The judgment of the Mississippi Supreme Court in this case imposes prior restraints on political boycott activity and punishes concededly lawful political expression by imposing liability in damages. In their Opposition, Respondents have attempted to sidestep the serious First Amendment questions raised by that judgment. They begin with an argument on jurisdiction that is frivolous,[1] and then misstate the holding of the court below and

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[1] Respondents argue that the Petition was not timely filed in this Court. They claim that the petitions for rehearing timely filed in the court below did not operate to toll the time for filing in this Court "as to issues not included therein," *i.e.*, in the petition for rehearing. Opp. 10. As revised months before the decision below, Sup. Ct. R. 20 tolls the time for filing "for all parties" when a

ignore the governing First Amendment principles long established by this Court.

1. As Respondents now admit, the basic theory of liability imposed by the Mississippi Supreme Court is that black citizens in Claiborne County formed a common law "conspiracy"—a "partnership where one acts for all and where even innocent protected acts are a step in a criminal plot." Opp. 21. They do not contend that the "conspiracy" involved a common adherence to violence. Rather, the theory of Respondents—and the Mississippi Supreme Court—is that an actionable "conspiracy" is established simply by proof of joint adherence to the political goals of the Claiborne County boycott. *See* Opp. 20 & n.31. Anyone who adhered to those goals was not only deemed a partner to any unlawful acts of others (who may have been completely unknown to him), but also held liable in tort for any lost trade occasioned by purely lawful First Amendment activities. As the Fifth Circuit properly observed in this very case, *Henry v. First National Bank*, 595 F.2d 291, 303 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980), that theory

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rehearing petition is timely filed "by any party in the case." *See also* Supreme Court Rules: The 1980 Revisions 16 (E. Gressman & R. Stern 1980). Here, both Petitioners and Respondents filed timely rehearing petitions, each of which operated to suspend the running of time in which to file a Petition.

The rule advocated by Respondents—which would make certiorari petitions due at one time on some issues and at another on other issues—is absurd on its face and flatly inconsistent with Rule 20. Respondents cite no authority to support an issue-specific rule of timeliness. In *Conboy v. First Nat'l Bank*, 203 U.S. 141 (1906), upon which they purport to rely, the petition for rehearing was not filed in the lower court until after the time in which review by this Court would otherwise have been due. *Department of Banking v. Pink*, 317 U.S. 264, 266 (1942), did not involve a rehearing petition, but a procedural motion that "did not seek to have the [lower court] reconsider any question decided in the case"; moreover, as the discussion in *Pink* makes clear, a petition for rehearing that asks for reconsideration of "any question decided in the case" suffices to toll the time to seek review in this Court. *Id.*

of liability does not give adequate weight to the First Amendment's guarantee of the rights of political expression and association.[2]

2. Respondents' cavalier assertion that the injunction is "not before this Court" (Opp. 11) does not comport with the facts. The grant of the injunction was specifically assigned as error below, and Petitioners in their briefs urged the dissolution of the chancellor's entire decree. As we have noted (Pet. 8 n.8), Petitioners used the word "moot" in connection with the injunction only in their argument to the Mississippi Supreme Court that any proceeding on remand should be at law rather than in equity. The argument was that, because the boycott was then inactive, there was no longer any need or basis for granting injunctive relief as a matter of state law. The injunction issue is not moot. The injunction stands, and it will operate permanently to restrain the exercise of Petitioners' First Amendment rights if left unreviewed by this Court. Also, as explained in the Petition, Petitioners sought rehearing on this very point.

3. Respondents' effort to invoke *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941), as the "controlling authority" in this case (Opp. 10), fails utterly. First, *Meadowmoor* expressly deals only with "the power of the states to prevent future coercion," 312 U.S. at 296, and has no application to the question of how to apportion damage liability. More-

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[2] Respondents claim that they "are not politicians" and that this is therefore "not a political boycott." Opp. 18. As the Fifth Circuit has held, Petitioners' efforts to integrate government institutions, schools, and other facilities in Claiborne County involved "essential political speech lying at the core of the First Amendment." *Henry, supra*, 595 F.2d at 303. In any event, these "small-town merchants" (Opp. 2) in fact include a number of the leaders of the community in 1966—a member of the Board of Aldermen, a representative to the state legislature, a city attorney, and three members of an *ad hoc* committee appointed by the mayor to meet with black citizens to discuss some of the very demands for political reform at issue in this case.

over, *Meadowmoor* applies only upon the specific finding that an injunction limited to the prohibition of unlawful conduct would not have been effective to prevent future outbursts of violence. *See Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 139 (1957). There is no finding to that effect by either the chancellor or the Mississippi Supreme Court, nor could there have been on this record. Rather, the court below enjoined speech that was concededly lawful because of the mere *presence* of unlawful activity during the boycott: "If any of these factors—force, violence, or threats—is present, then the boycott is illegal regardless of whether it is primary, secondary, economical, political, social or other." App. A at 23a. That extraordinary, and erroneous, standard finds no support in *Meadowmoor* or in any other case.

4. Respondents' characterization of the boycott as a "reign of terror" (Opp. 12) is ludicrous to anyone who has reviewed the testimony. Respondents' appendix of citations to allegedly violent "incidents" in the record is shockingly misleading. Cited therein are references to attacks by white persons against black persons,[3] events characterized as "threats" that actually involved nothing more than requests not to patronize stores, and testimony probative of nothing whatsoever.[4] In fact, the isolated acts of violence or vandalism that did occur during the

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[3] Respondents cite, for example, the killing of a black man at his home by Port Gibson police and subsequent shootings into the First Baptist Church and beatings of one of the defendants ("incidents" 16 and 22).

[4] Consider, for example, Respondents' "incident" 45, which they have labelled "Johnny Cox incident at filling station." The cited evidence consists *entirely* of the following testimony by Police Chief Porter:

> "Q. Did you ever investigate any complaint, official complaint, made by Johnny Cox with regard to an incident at a filling station?
>
> "A. No, sir." R. 2100.

three-year period of the boycott were few in number and, for the most part, completely unconnected to the boycott.

CONCLUSION

For the reasons stated above and in the Petition, Petitioners pray that a Writ of Certiorari issue to review the Judgment and Opinion of the Supreme Court of Mississippi in this case.

Respectfully submitted,

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No. 81-202

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

BRIEF FOR PETITIONERS

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December 24, 1981

QUESTIONS PRESENTED FOR REVIEW

1. Where a state court found that a boycott of white merchants in a small city, organized by Black citizens to protest the city's and county's continued denial of their civil rights, was accompanied not only by speeches, picketing, leaflet distribution and peaceful marches, but also by what the state court called "intimidation, threats, social ostracism, vilification and traduction," as well as a few incidents of physical violence, could the state court constitutionally rule that the entire boycott was an unlawful common law conspiracy for which all boycott participants, whether or not they engaged in acts of physical violence, were liable in damages?

2. Whether or not the state court could constitutionally hold the entire boycott illegal, could it constitutionally enjoin any or all of the participants from engaging in further peaceful boycott activity such as "persuading, soliciting and advising" any person to boycott the merchants?

LIST OF PARTIES BELOW

In addition to the National Association for the Advancement of Colored People and these 91 individual Petitioners,* the following parties were Appellants in the Mississippi Supreme Court: Mississippi Action for Progress, Inc.; Beatrice Atlas; Eli Brooks; Priscilla Brooks; Maggie Clark; Mack Lewis Davis; Alex Dorsey; Sally Ella Dorsey; Mary Harris Durham; John Eggleston; John Ellis; Rachael Ellis; Ethel Graise; Charlie Harris; Albert Jackson; Mrs. E. J. Jennings; Lela Jones; Bobby Kelly; Clarence Lucas; Bessie Newman; D. A. Newman; Roosevelt Owens; Henry Otis Preston; Viola Roberson; Dora Shorter; Roman Shorter; Rosa Shorter;

---

* The individual Petitioners are Ferd Allen; Henry Anderson, Sr.; Alonzo Atlas; Calvin Bailey; James Bailey, Jr.; McLawrence Bailey; Joseph Mack "Buster" Barber; Kenneth C. Barber; Willie Beasley; Helen Beasley; Calvin Blackburn; Marjorie W. Brandon; Janie Brown; Tullos Brown; Eddie Burrell; James Burrell; Robert Butler, Jr.; Arthur Lee Camphor; Irma Rae Camphor; W. E. Camphor; Alberta Coleman; Charles Collier; James Collier; Alexander Collins; Geneva Collins; Thelma Crowder; Dan Currie; Sarah Jane Currie; Charles Davis; Mary Ella Dee; James Edward DeVoual; Geneva Durham; Johnny Frank Durham; Harvey Ellis; Jim Ellis, Jr.; Katie Ellis; Charles Evers; James Gray; Walter L. Griffin, Sr.; Bernard Gusta; Leesco Guster; Clyde Harvey; Jim Holt; Willie Jackson; Jesse Johnson; Roscoe Johnson; Julia Coleman Jones; Marcus Jones; Nathaniel H. Jones; Samuel Jones, Jr.; Bernice Lee; A. E. Lee; Margaret Liggins; Julia Lucas; Nathaniel Martin; Leander Monroe; Johnny Moore; Mary Lee Moore; Willie V. Moore; Ellis Neal, Sr.; Amos Newsome, Jr.; James Herbert Odom; Leona Owens; William Owens; Henry Patton, Jr.; Even Roberson; William Roberson; Mary Ross; Odessa Ross; William Matt Ross; Elmo J. Scott, Jr.; Rudolph J. Shields; Oliver Shinall; Bilbo Smith; Ira Thomas; Carl Thompson, Jr.; Marguerite Thompson; Mack Tisdale; George Henry Walker; Thelma K. Walker; Eddie Walls, Jr.; Alex Warner; Albert Weathers; Carl Lee Wells, a/k/a Boone Wells; Eddie Lee Wells; Katie Beatrice Wells; James Whitney; Calvin Williams; Ernestine Williams; Aaron Wilson; and Arthur Wyatt. *See* R. 15253-55 (stipulation amending complaint to conform to proof).

Annie B. Smith; Delores Ross Smith; Leon Tarleton; Lessie Mae Walls; Alonzo Warner; Ethel Warner; Bonnie Wells; Gussie Pearl Wilson; Willie Wilson; Early Wren; and Ruby Wren.

The following parties were Appellees in the Mississippi Supreme Court: Claiborne Hardware Company, Inc.; Q. H. McDaniel, Jr., d/b/a McDaniel Pharmacy; James E. Hudson and George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store; Waddy Abraham, d/b/a Jitney Jungle; Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store; Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store; Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria; Port Gibson Lumber & Supply Company, Inc.; W. H. Hay, d/b/a O.K. Cleaners & Shirt Laundry; Charles R. Dobbs, d/b/a Western Auto Associates Store; Allen Motor Co., Inc.; and Mrs. Edgar A. McCaa, d/b/a Town & Country.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-202

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Supreme Court of Mississippi in this case, *NAACP v. Claiborne Hardware Co.*, 393 So. 2d 1290 (Miss. 1980), is reproduced in Appendix A to the Appendices to Petition for Writ of Certiorari ("App."). The unreported opinion of the Chancery Court of the First Judicial District of Hinds County is reproduced in App. B.

JURISDICTION

The judgment of the Mississippi Supreme Court was entered on December 10, 1980. App. C. That court extended the time for filing of petitions for rehearing until January 24, 1981. App. D. Petitions for rehearing were denied on March 4, 1981. App. E. By order of Justice Powell, dated May 23, 1981, the time for filing a petition for writ of certiorari was extended to and including August 1, 1981. App. F. The petition was filed in this Court on July 31, 1981. Jurisdiction is vested by 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I.

The Fourteenth Amendment to the United States Constitution provides:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

STATEMENT OF THE CASE

Petitioners are the National Association for the Advancement of Colored People ("NAACP")[1] and 91 individual Black residents of the State of Mississippi. Respondents are twelve merchants doing business in the town of Port Gibson, in Claiborne County, Mississippi. This case arises from a civil rights boycott in Claiborne County that began in 1966.

Statement of Facts

The Claiborne County boycott campaign was an integral part of the civil rights movement of the 1960's. Its causes went back much further. Since Reconstruction, Black citizens of Claiborne County had been foreclosed from participation in elections, forced to attend segregated schools, routinely denied the use of basic public accommodations, and denied employment either in public jobs

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[1] The listing of those entities affiliated with Petitioner NAACP is provided in footnote 1 to the Petition.

funded by their tax dollars or in private jobs working for the merchants who depended on their trade. *See* App. 6b (Chancery Court opinion). In December 1965, a Human Relations Committee, comprised of certain Black citizens in Claiborne County, presented a petition for redress of grievances to municipal and county officials and merchants. R. 590-91; Ex. D-2 (R. 770, 771).

A bi-racial committee was appointed by Port Gibson officials to deal with these matters; its members included five of these Petitioners and some of the Respondents. This committee met on a number of occasions to deal with Port Gibson's racial problems, but there was no final resolution of these grievances. R. 590-92, 756-57, 767-68, 772-73; Ex. D-1 (R. 753, 754). On March 14, 1966, the Black members of the committee presented to the public officials of Port Gibson and Claiborne County a further petition entitled "Demands for Racial Justice." That petition was "principally addressed to governmental changes." App. 7b, 13b (Chancery Court opinion). It called, among other things, for an end to racial discrimination in employment by Claiborne County merchants and by the city and county governments, for desegregation of the local school system and other public facilities, and for the creation of an "officially constituted" community affairs committee.[2]

The merchants and the city and county governments did not satisfy the grievances listed in the petition. *See* App. 15b. As Respondent William H. Hay testified, "I thought that they were demanding too much too quickly." R. 14659. Thereafter, on April 1, 1966, at a meeting held in the First Baptist Church of Port Gibson, a group of several hundred Black citizens decided by voice vote to support a boycott of a number of white-owned businesses in Claiborne County in order to dramatize their grievances, and they called upon their fellow citizens to do

[2] This document, as supplemented, was quoted by both courts below. App. 10a-12a, 8b-14b.

the same. The owners of the boycotted businesses included those Respondents who had served on the mayor's bi-racial committee and other Respondents who were important civic leaders and public officials in Claiborne County.[3] The chancellor observed, "[i]t would be redundant and superfluous to recount all the testimony given by NAACP members" to the effect that "power in the community" lay with these prominent businessmen. App. 17b.

The boycott was accompanied and publicized by peaceful meetings, speeches, marches, picketing, and leaflet distribution aimed at persuading Black people not to patronize the merchants' stores. City and county law enforcement officials closely monitored all of these activities, photographing the events and tape-recording certain speeches.[4]

Marches in support of the boycott usually took place in connection with meetings of the then nascent Clai-

---

[3] Respondents Allen and Al Batten (one of the owners of Respondent Port Gibson Lumber Co.), for example, were aldermen for the City of Port Gibson. R. 15111. Robert Vaughan, another part owner and operator of Port Gibson Lumber, represented Claiborne County in the Mississippi House of Representatives. R. 15160. Respondent Abraham had served on the school board, which administered a segregated public school system, for over twenty years. R. 14906. Respondent Hay had previously served on the school board for ten years. R. 14678-79. Respondent Hudson served on the Claiborne County Democratic Executive Committee (R. 840), and considered himself a prominent white leader in Port Gibson. R. 14741.

[4] While we describe the testimony concerning these various boycott activities below, they are all graphically depicted by the photographs introduced into evidence by Respondents. *See* Exs. C-7-5, 6, 8, 10, 20, 21, 25 (R. 944-45, 947-49, 952, 954); C-9 (R. 971, 972-76); C-10 (R. 977, 978-81); C-11 (R. 982, 983-86); C-17 (R. 1051, 1052-53). (J.A. 19-22, 25-37, 40-41.) These photographs show peaceful assemblies at the First Baptist Church and the Claiborne County Courthouse, orderly marches in support of the boycott, and peaceful, nondisruptive picketing activity in Port Gibson and outlying rural areas, largely by children.

borne County Branch of the NAACP at the First Baptist Church in Port Gibson. The marchers were generally organized in single file or two abreast. R. 1127, 1469-70, 1754-61, 2040-44. Rodney Porter, the Port Gibson police chief, testified that some of the boycott leaders, including Petitioner Calvin Williams, actively cooperated with the police to ensure that the marches were at all times orderly. R. 2075, 2139. Dan McKay, the Claiborne County sheriff, testified that no one was ever arrested for unlawful conduct during the marching. R. 1126-31. Boycott leaders stationed people at street corners to ensure that the marchers would not block traffic. R. 4406-08. The merchants themselves testified that the marchers were peaceful and orderly. R. 860-62, 14791.

According to Sheriff McKay, picketing activity in support of the boycott was also orderly, and did not block traffic on the sidewalks.[5] The picketing was closely ob-

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[5] The sheriff testified:

"Q. These marchers when they would march, I believe you said two abreast . . . , how long would it take them to go two and a half blocks there?

"A. Approximately twenty minutes.

"Q. And would they march in a violent manner, hollering and screaming, or anything like that?

"A. Very quietly.

". . . .

"Q. Now the people that you have photographed, that you identified that were marching with picket signs, were these people walking up close to the stores or were they walking away from the stores or how did they proceed on the sidewalk?

"A. They would usually walk on one side, right or left, and one abreast.

"Q. And would they gather and crowd in the doorways with these picket signs?

"A. Not to my knowledge.

"Q. As a matter of fact, would they walk on the outside of the sidewalk next to the curb as they carried these signs?

"A. Well, I would say they'd walk on one side. They wouldn't get in the middle, you know, they'd get on the outer end. They'd always walk on the outside.

"Q. They were not, as you call, blocking traffic on the sidewalk. The sidewalks are fairly wide, are they not?

served and photographed by the police. R. 10105. As the Mississippi Supreme Court observed, many of the picketers were young children (App. 13a); Chief Porter put the figure at about 60 percent. R. 2140. *See also* R. 782, 1147, 3901, 4699-4700, 13764. Picketing activity rose and fell in phase with the intensity of the boycott (R. 2023, 2028, 4736); as the owner of Respondent Claiborne Hardware Co. testified, after the early weeks beginning in April 1966, it dropped off for "a couple of years." R. 15013-16. *See also* R. 6722, 9983.

During the early weeks of the boycott, many Black persons from outlying towns and rural areas in Claiborne County who came into town to shop were unaware of the existence of a boycott. R. 649, 4733, 10119. Boycott participants stopped patrons who were going into white stores in order to communicate to them the fact that a boycott was in progress and to ask that they not patronize white businesses. R. 917-19, 2048. These participants also positioned themselves so as to be able to observe who patronized white stores; photographs depicting such observation were introduced into evidence by Respondents. Exs. C-12-1, 2, 7 (R. 987-88, 989, 992). (J.A. 38-39.) In the words of Petitioner Barbara Ellis, these "store-watchers" and other boycott participants—who included 14-15 year old girls (R. 14646-47, 14662-64)—were encouraging and "telling people that the stores were under boycott." R. 1203.

At the meetings of the NAACP in the First Baptist Church, the names of boycott violators were sometimes called out, and speeches were sometimes given in support of the boycott. From time to time during the boycott, a mimeographed newspaper entitled *Black Times* was prepared and circulated in Port Gibson, with the assistance of some of the Petitioners. *Black Times* sometimes

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"A. Yes.

"Q. And they were not blocking the steady flow of movement there, were they?

"A. No." R. 1127-28.

published the names of Black people who had been observed trading in boycotted businesses.

At some point after the boycott began, a group of Black men in Port Gibson began an informal organization called "the Deacons." The Deacons offered physical security for members of the NAACP during their weekly meetings in the church, in light of apprehension about the possibility of violence by white persons during this period. R. 8798-8800, 8954-56, 9854-56. There is testimony that some of the Deacons dressed in black clothing and black straw hats, and they came to be known as "Black Hats." Some of the persons who were Deacons also participated in the boycott activities in Claiborne County described above.

There is testimony that boycott activities in Port Gibson intensified at two different points after April 1966. The first was April 1968, after the assassination of Dr. Martin Luther King, Jr., in Memphis. The second was in April 1969, after a young Black man named Roosevelt "Dusty" Jackson was shot and killed at his home in a scuffle with two Port Gibson police officers who had come to arrest him. That shooting was followed by a mass meeting of Black persons at the First Baptist Church. White persons, including some of the white merchants as well as the police, arrived at the church armed with guns. R. 7878, 7920-22. One Black man, Horace Lightfoot, was attacked and beaten. Shots were fired into the church where the Black persons had assembled. Petitioner Tullos Brown was wounded by gunfire, as was a Mississippi State Highway Patrolman. Weapons were found inside the church, after the shooting had stopped and the crowd had been quieted by Petitioner Evers and persuaded to return home. R. 4173-74, 4783.

The foregoing events led the Black community to demand that the two officers responsible for Jackson's killing be dismissed from the city police force. This demand

was refused. On April 21, 1969, Petitioner Charles Evers gave a speech urging intensification of the boycott in protest against these events and the lack of response by the white community. In that speech, Evers said, "If we catch you going into any of them racist white stores, we're gonna break your goddamned necks." R. 4685-87, Ex. C-43 (R. 4919, 4921-22, 4923). However, in another speech given two days earlier, which was tape-recorded by police, Evers counselled Black persons against the use of violence. Ex. C-13 (R. 998, 1005, 1091-1109).

The chancellor identified twelve acts of "enforcement" that occurred in Port Gibson or outlying areas of Claiborne County from 1966 to 1969 during the time the boycott was in effect. On the basis of these acts, he found a "thread of fear and violence" running through the boycott. App. 34b-38b. The Mississippi Supreme Court adopted the chancellor's description and quoted it verbatim. App. 15a-19a. For some of these acts, no perpetrator is identified. For others, no connection to the boycott at all—let alone to any Petitioner—is shown. Only one of these incidents—the foregoing remark by Petitioner Charles Evers—was attributed to any of the leaders of the boycott, and there is no evidence that this remark incited any violent act. Only three of the incidents associate any of the Petitioners with physical violence of any kind. See pages 28-30 *infra*.

Proceedings Below

Certain of the boycotted merchants sued in the Chancery Court for Hinds County (rather than Claiborne County, where the boycott occurred) on October 31, 1969. The suit prayed for damages and an injunction. No preliminary injunctive relief was ever sought. The merits of the case were not addressed in Chancery Court until late 1972.[6] Petitioners' special demurrers, raising

[6] Before defending on the merits, Petitioners sought an injunction in federal court against further proceedings in Chancery

the constitutional issues now before this Court (R. 346, 478), were overruled. R. 374.

Trial began in June 1973 and lasted nearly eight months. Thirteen of the merchants testified. However, the vast bulk of the 16,000 page transcript consists of the testimony of 106 of the defendants, called as adverse witnesses by counsel for Respondents. These defendants were all asked generally whether they knew what the boycott was about or agreed with its aims. They were also asked whether they knew or had heard that any of their co-defendants had been members of the NAACP, attended NAACP meetings, marched, picketed, or encouraged others not to patronize white stores. The remaining questions generally concerned whether the witnesses knew or had heard of incidents of vandalism or other unlawful acts that allegedly occurred in Port Gib-

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Court. In federal court, these Petitioners (and other chancery defendants) urged that the merchants' suit was an effort to chill the exercise of their First Amendment rights and to harrass and destroy the Petitioner NAACP. In addition, they claimed, procedural aspects of the state court litigation were grossly unfair. As noted above, the merchants had filed their suit, not in Claiborne County where all the plaintiff businesses were located and all but a few of the defendants resided, but nearly 100 miles away in Hinds County. And, by resorting to Mississippi's non-resident attachment statute—since declared unconstitutional by both federal courts in Mississippi, *MPI Inc. v. McCullough*, 463 F. Supp. 887 (N.D. Miss. 1978); *Mississippi Chem. Corp. v. Chemical Constr. Corp.*, 444 F. Supp. 925 (S.D. Miss. 1977)—the merchants were able to invoke equity jurisdiction and thus deprive the defendants of trial by jury.

The federal court entered a preliminary injunction restraining the Chancery Court proceedings, on the theory that the merchants "seek to infringe upon [Petitioners'] First Amendment rights," and that "the prosecution of the State Action will have a chilling effect upon the exercise of those rights." *Henry v. First National Bank*, 50 F.R.D. 251, 268 (N.D. Miss. 1970). On appeal, the Fifth Circuit reversed, holding that the mere commencement of a private state tort suit had not itself involved "state action" for purposes of 28 U.S.C. § 1343(3). 444 F.2d 1300 (5th Cir. 1971), *cert. denied*, 405 U.S. 1019 (1972) (*"Henry I"*).

son during the 1966 to 1970 time period. Many of the witnesses had never even heard of the incidents suggested by Respondents' counsel.

Petitioners' post-trial motions to dismiss (R. 16225, 16243) were overruled in February 1974. R. 16263, 16274. On August 19, 1976, the chancellor issued a memorandum opinion finding the boycott unlawful in its entirety and all the Petitioners liable for all the damages caused by the boycott. He awarded to these Respondents $1,250,699 in damages, statutory penalties, and attorneys' fees. The chancellor also enjoined 134 defendants, and all those confederating with them, from using physical violence and also, *inter alia*, from "persuading, soliciting, advising, threatening, coercing, intimidating and restraining any person to withdraw and withhold his or her patronage or to cease trading with the complainants" as well as "picketing or patrolling" the merchants' places of business. App. 19g.

The chancellor's first ground for finding liability was that Petitioners had engaged in a civil conspiracy to commit the common law tort of interference with the businesses of the merchants. App. 38b-44b. As a second and alternative ground of liability, the chancellor found the boycott unlawful as a secondary boycott proscribed by Miss. Code Ann. § 97-23-85. App. 44b-53b. The third alternative ground of the chancellor's decision was that the boycott had violated Mississippi's statutory prohibitions against restraints of trade. App. 53b-56b.

Petitioners appealed to the Mississippi Supreme Court.[7] That court rendered its opinion and judgment on De-

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[7] Petitioners also moved in the Mississippi Supreme Court for relief from Mississippi's 125 percent supersedeas bonding requirement. R. 16467. When that motion was denied, Petitioners applied to the United States District Court for the Northern District of Mississippi for relief. That court enjoined execution of the chancery court judgment pending appeal. *Henry v. First Nat'l Bank*, 424 F. Supp. 633 (N.D. Miss. 1976), *aff'd*, 595 F.2d 291 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980) (*"Henry II"*).

cember 10, 1980. The court held the Mississippi secondary boycott statute inapplicable as a ground of liability because that statute was enacted in 1968, after the boycott began, and had only prospective force. App. 22a, 27a. The court also declined to apply the Mississippi trade restraint statutes, holding that they had "no application to boycotts to achieve political goals." App. 28a. However, the court went on to hold the entire boycott unlawful as an illegal common law conspiracy. It found that the "presence of a conspiracy is beyond peradventure," and ruled that if "any of these factors—force, violence, or threats—is present, then the boycott is illegal regardless of whether it [was] primary, secondary, economical, political, social or other. All of these factors are here present, and the boycott was illegally operated . . . ." App. 23a.

The Mississippi Supreme Court held all 92 Petitioners liable, jointly and severally, for any and all losses that resulted "from the boycott." App. 35a. It did find errors of state law in the merchants' proof of damages, and remanded for a retrial on that question. App. 35a. The court dismissed as to a number of other defendants for "insufficient proof, lack of proof, or otherwise." App. 26a. It left the chancellor's injunction untouched, holding that Petitioners had conceded that the injunctive aspects of the case were "moot." App. 5a.[8] Petitioners

[8] The grant of the injunction was specifically assigned as error below, and Petitioners in their briefs below urged the dissolution of the chancellor's entire decree. In so doing, they used the word "moot" only in their argument that, because the boycott was then inactive, there was no longer any basis for granting injunctive relief as a matter of state law. The injunction stands, and if left intact by this Court it will operate permanently to restrain the exercise of First Amendment rights by these Petitioners and all persons deemed to be "confederated" with them. It is not moot. "As a general rule, 'voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot.' " *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). *See also Liner v. Jafco, Inc.*, 375 U.S. 301 (1964).

filed a petition for rehearing on the injunction issues, which was denied without opinion on March 4, 1981. App. E, H.

SUMMARY OF ARGUMENT

The decision of the Mississippi Supreme Court appears to rest entirely on the premise that associations of persons to achieve lawful objectives become illegal conspiracies actionable at common law whenever "force, violence, and threats" are "present." The court's only reference to the relevance of the First Amendment is its statement that it knows of "no decision that free speech guaranteed by the First Amendment includes in its protection the right to commit crime." But the court did not find that any of the Petitioners had committed a crime.

The opinion below is also far from clear about what conduct the court found to constitute "force, violence, and threats." The opinion adopts the conclusory findings of the chancellor that "certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers." But the examples given in the chancellor's next sentences, also adopted and quoted in the opinion below, are that "some of the devices used" were "[i]ntimidation, threats, social ostracism, vilification, and traduction" and the stationing of "enforcers" in the vicinity of white-owned businesses. None of these "devices" describes an act of physical violence.

I.

It may have been the view of the Mississippi Supreme Court that what made the boycott an unlawful conspiracy was that its leaders had agreed to enforce it, and that some of the enforcers had intimidated, threatened, ostracized, vilified, and traduced Black persons into withholding their patronage.

In Part I of this Argument, we show that if this was the view of the court below, its judgment violates the

First Amendment. A boycott enforced by non-violent means is a constitutionally protected form of petition, speech, and assembly. It is a form that was employed by the Framers themselves to seek changes in onerous British laws such as the Stamp and Townshend Acts. Colonial boycott agreements regularly included enforcement clauses providing for the denunciation and boycott of colonists who refused to abide by the agreements. These clauses were supported by Washington, Jefferson and Madison, among others. And they were enforced by such tactics as "intimidation, threats, ostracism, vilification, and traduction." The boycott movement culminated in 1774 in the First Continental Congress—an unofficial assembly for the redress of grievances against the Intolerable Acts enacted by Parliament in reprisal for the Boston Tea Party. That Congress adopted an "Association" calling on all colonial citizens to adopt a policy including the nonimportation of any goods from British merchants, and urged the denunciation and boycott of all who refused to comply. Washington and Adams signed the Association, and Jefferson and Madison became members of committees to enforce it.

When the Framers adopted the Bill of Rights, they must have intended that the guarantees of free speech and assembly and of petition for redress of grievances would cover boycotts of the type in which they themselves had engaged. Indeed, at the very time when the Federalist was being written and the Constitution was being ratified, Alexander Hamilton and John Jay were leading the New York Society for Promoting the Manumission of Slaves in a boycott of New York merchants who engaged in the slave trade.

No decision of this Court has squarely ruled on the protection the First Amendment affords to an enforced political boycott, such as the civil rights boycott involved here. But true to the colonial tradition, every element of a political boycott enforced by non-violent means—including what some would call intimidation, threats,

social ostracism, vilification, and traduction—has been sustained under closely analogous decisions of this Court. And an unbroken line of decisions of the United States Court of Appeals for the Fifth Circuit, including one involving the boycott in this very case, has upheld the use of these non-violent methods to enforce a political boycott.

II.

Alternatively, the Mississippi Supreme Court may have believed that the "presence" during the boycott of a few acts or threats of physical violence was a sufficient ground for depriving all Petitioners of their First Amendment protections. In Part II of this Argument, we show that any such ground is also untenable either on the facts of record or as a matter of First Amendment law.

The chancellor concluded that the "thread of fear and violence is woven throughout this case." This conclusion ignores most of the testimony; witness after witness testified that in 1966 Black persons in Claiborne county were sufficiently impatient with the continued denial of their civil rights that they voluntarily refused to have any further dealings with Respondents in this case. The chancellor's "thread" is composed instead of twelve incidents of "enforcement." Most of these incidents are utterly unconnected to the boycott, and in fact many of the witnesses had never even heard of them. The few remaining incidents were either non-violent (one was merely Petitioner NAACP's alleged provision of attorneys to defend arrested Black persons) or unconnected with any Petitioner. In only three of these incidents was *any* Petitioner even suggested by the chancellor to have been involved in violence. In one of the three, a criminal jury was unable to agree and the courts below made no effort to resolve the conflicting testimony. In a second, the violence consisted of trampling a flower garden. In the third, the accused Petitioner testified that the "vic-

tim" had pulled a gun on him (R. 5019), and the trial judge did not resolve the conflicting testimony as to what actually happened. This "thread" is all that ties any unlawful activity to this boycott or the claims of lost patronage made by Respondents.

There is no finding that any of the other individual Petitioners, or the Petitioner NAACP, ever committed, authorized, approved, or condoned any specific act of physical violence or any program of physical violence. Of the 91 individual Petitioners, 30 participated only by attending NAACP meetings and/or marching to show their support for the boycott, and 39 more participated further only in picketing, distributing leaflets, and other forms of non-violent speech. On this record, the First Amendment does not permit the attribution of vicarious liability to all individual Petitioners, or to the NAACP, for the one, two, or three acts of physical violence even arguably committed by some other participant in connection with the boycott.

In any event, the court below erred in allowing damages to be levied against all Petitioners for all the consequences of the boycott, despite the court's own findings that the non-violent aspects of the boycott had been responsible for a large part of its success. First Amendment rights of expression and association cannot be chilled by overbroad adjudications of liability for the harm done by protected conduct, merely because a few episodes of unprotected conduct were also "present."

III.

The decision below also transgressed the First Amendment by enjoining Petitioners from engaging in further peaceful boycott activity. In Part III of this Argument, we show that the court below upheld an injunction against "persuading, soliciting, [and] advising . . . any person to withdraw and withhold his or her patronage or to cease trading with . . . complainants," or against stationing "enforcers" near the merchants' premises. Even

if one assumes the validity of the finding that some acts of physical violence were "present" during the boycott, an injunction so sweeping is plainly void.

ARGUMENT

I. BOYCOTTS SEEKING REDRESS OF POLITICAL GRIEVANCES ARE CLASSIC AMERICAN FORMS OF PETITION AND ASSEMBLY, AND NONVIOLENT ACTIVITIES TO SUPPORT OR ENFORCE SUCH BOYCOTTS ARE PROTECTED BY THE FIRST AMENDMENT.

As this Court has very recently observed, "the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process."[9] The Port Gibson boycott was in the mainstream of this American political tradition. As this Court has consistently held, marching, picketing, speeches, distribution of leaflets and efforts at persuasion of the type that accompanied the boycott are activities that lie at the center of the First Amendment.

A. Political Boycott Activities Have Formed an Integral Part of the American Political Process for Over Two Hundred Years.

A political boycott led by two of the three authors of the Federalist was in progress at the very time the First Amendment was adopted. In order to support compliance with New York's 1788 prohibition of the slave trade, the New York Society for Promoting the Manumission of Slaves sponsored a boycott of businessmen who participated in that trade. John Jay was the Society's first president and Alexander Hamilton was its first secretary.[10]

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[9] *Citizens Against Rent Control v. City of Berkeley*, 102 S. Ct. 434, 436 (1981).

[10] *See* A.L. HIGGINBOTHAM, IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD 140, 142 (1978); E. MCMANUS, A HISTORY OF NEGRO SLAVERY IN NEW YORK 168-71 (1966).

Although the word "boycott" would not be coined for another 100 years,[11] this form of political protest was well known, understood, and approved by the Framers, including the third Federalist author, James Madison. Its use dates back at least as far as 1765-66, when colonial petitions that Parliament repeal the Stamp Act were rejected out of hand. The colonists developed the boycott of British merchants as a more demonstrative, but nevertheless peaceful, form of assembly and petition. In the Stamp Act boycott, the merchants of Boston, New York, Philadelphia, and other cities signed written agreements undertaking not to import goods from Britain until Parliament repealed the measure.[12]

The Stamp Act was repealed, but the very next year Parliament promulgated the Townshend Acts, which imposed duties on glass, lead, paint, paper and tea imported into the American colonies. Merchants throughout twelve colonies again resorted to non-importation agreements. The new agreements were signed not only by merchants but also by persons of other occupations. These agreements generally included enforcement provisions authorizing personal ostracism and economic boycotts of persons who refused to abide by the agreements.[13] In 1770, Parliament repealed most of the Townshend duties, except for the tax on tea.

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[11] The term "boycott" first came into use in 1880 to describe actions taken by the Irish Land League toward a Captain Boycott and certain other British landlords. 1 OXFORD ENGLISH DICTIONARY 260, cols. 5 & 6 (compact ed. 1971).

[12] *See, e.g.*, C. ANDREWS, THE BOSTON MERCHANTS AND THE NON-IMPORTATION MOVEMENT 40-43 (1968 ed.); A. SCHLESINGER, THE COLONIAL MERCHANTS AND THE AMERICAN REVOLUTION 76-83 (1939 ed.); C. UBBELOHDE, THE VICE-ADMIRALTY COURTS AND THE AMERICAN REVOLUTION 89-90 (1960).

[13] *See* ANDREWS at 43-76; SCHLESINGER at 113-196; UBBELOHDE at 115-16. In Massachusetts, for example, thousands of handbills were dispersed in May 1769 advising all persons to shun the shops of specified colonial merchants. SCHLESINGER at 158-59. At a meet-

In 1773 Parliament enacted a new Tea Act, granting the East India Company a tea monopoly in the American colonies and empowering it to deal directly with colonial retailers, thus depriving many American merchant middlemen of a profitable line of business. This led to a series of new efforts to boycott all imports of tea, and the enforcement of this boycott resulted in the Boston Tea Party. In reprisal, Parliament in 1774 passed the Intolerable Acts, which closed the port of Boston, made major changes in the government of Massachusetts Bay, and allowed trials in England for crimes allegedly committed in Massachusetts. The colonists responded with yet another round of non-importation agreements and by electing delegates to an unofficial Continental Congress in Philadelphia.[14] In September 1774, the Congress approved the Continental Association, a wide-ranging non-importation, non-exportation agreement which was to be effective until Parliament granted the colonies' request for relief.[15] Once again, committees to enforce the boycott were chosen in every community.[16]

In colonial America non-importation agreements with specific political goals were organized by hundreds and supported by thousands of citizens. George Washington supported and helped draft (with George Mason) a non-importation agreement signed by the members of the Virginia House of Burgesses in 1769; as a Virginia delegate to the First Continental Congress, he signed the Continental Association.[17] Thomas Jefferson firmly sup-

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ing in Faneuil Hall, participants voted that those who persisted in defying the agreement "must be considered as Enemies to the Constitution of their Country." *Id.* at 163-64.

[14] *See, e.g.*, SCHLESINGER at 305-92.

[15] *See id.* at 393-473; UBBELOHDE at 181-82.

[16] *See* SCHLESINGER at 473-535.

[17] J. FLEXNER, GEORGE WASHINGTON: THE FORGE OF EXPERIENCE (1732-1775) 311-14, 324-28 (1965); D. MALONE, JEFFERSON THE VIRGINIAN 137 (1948).

ported the Virginia agreements of 1769-70 and drafted the Virginia non-importation, non-exportation agreement of 1774, which served as the model for the Continental Association. Jefferson and Madison served on Virginia committees to enforce the Association.[18] John Hancock played an important role in enforcing the boycott inspired by the Townshend Act.[19] And Benjamin Franklin, John Adams, John Jay, John Dickinson, Patrick Henry, and Richard Henry Lee all were prominent supporters of the Continental Association as well as the earlier agreements.[20]

Those founders of our country believed their boycott activities were lawful even under colonial rule. They would have been shocked by the notion that, having won their liberty, they had adopted a Bill of Rights that did not safeguard the very type of assembly and petition for redress of grievances they had used themselves. The supporters of the non-importation agreements considered them to be soundly "constitutional modes of obtaining relief," [21] and the one means short of armed conflict that might induce Parliament to grant the political reforms they demanded.[22] The Framers of the Constitution plainly regarded a boycott of merchants, peaceably enforced against non-participants, as a legitimate and important method of protesting against unjust government action. In adopting the First Amendment, they plainly intended to preserve the right to employ that same type of assembly and petition to redress future grievances against the new government they were forming.

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[18] H. COMMAGER, DOCUMENTS OF AMERICAN HISTORY 77-78, 80 (1963 ed.); MALONE at 137-38, 192 (Jefferson); R. KETCHAM, JAMES MADISON: A BIOGRAPHY 61, 63 (1971) (Madison).

[19] ANDREWS at 44.

[20] *See* SCHLESINGER 220 (Franklin); 416 (Adams); 415 (Jay); 114, 118 (Dickinson); 136 (Henry); 136, 362-64, 419 (Lee).

[21] SCHLESINGER at 96.

[22] *See* FLEXNER at 311-12.

There is not the slightest doubt that the colonial boycotts of British merchants were enforced boycotts. The "devices" described by the chancellor as employed in this case—"intimidation, threats, social ostracism, vilification, and traduction"—were also employed by our colonial forefathers. No evidence of "enforcement" in the present record is more explicit than paragraph 11 of the Association adopted by the First Continental Congress:

> "11. That a committee be chosen in every county, city, and town, by those who are qualified to vote for representatives in the legislature, whose business it shall be attentively to observe the conduct of all persons touching this association; and when it shall be made to appear, to the satisfaction of a majority of any such committee, that any person within the limits of their appointment has violated this association, that such majority do forthwith cause the truth of the case to be published in the gazette; to that end, that all such foes to the rights of British-America may be publicly known, and universally contemned as the enemies of American liberty; and thenceforth we respectively will break off all dealings with him or her." [23]

Political boycotts have continued to play an important role in the peaceful resolution of political differences in this country. In the years before the Civil War, abolitionists followed the precedent of the Jay-Hamilton New York Manumission Society and organized a boycott of slave-made goods. H. LAIDLER, BOYCOTTS AND THE LABOR STRUGGLE 55 (1913). Two generations later, Consumers' Leagues organized by the Progressives urged boycotts of certain "sweat-shop" industries. *Id.* at 33-35. The political boycott as a civil rights vehicle gained renewed attention in 1955, when Rosa Parks, Dr. Martin Luther King, Jr., Petitioner NAACP, and thousands of Black persons in Montgomery began a boycott of that city's

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[23] The full text of the Association is reprinted as an Appendix to this brief.

bus system in a successful effort to obtain its desegregation. R. KLUGER, SIMPLE JUSTICE 749-50 (1976). Just last year, the Eighth Circuit held immune from antitrust and tort liability the National Organization for Women's boycott of hotels and other private facilities in states that have not ratified the proposed Equal Rights Amendment. *Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980).

B. Peaceful Activities To Support and Enforce Civil Rights Boycotts Are Protected by the First Amendment.

Like many political boycotts that preceded it, the Claiborne County boycott involved the exercise of each of the "cognate" rights of political participation—speech, assembly, association, and petition for redress of grievances—articulated by this Court in *De Jonge v. Oregon*, 299 U.S. 353, 364-66 (1937), and *Thomas v. Collins*, 323 U.S. 516, 530 (1945):

> "It was not by accident or coincidence that the rights to freedom of speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights . . . and therefore are united in the First [Amendment's] assurance. *Cf.* 1 Annals of Congress 759-60."

As the Court also observed in *Collins*, the First Amendment's principle of "'free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts." *Id.* at 537. As the Court stated in *NAACP v. Button*, 371 U.S. 415, 429 (1963):

> "[A]bstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion."

Efforts to persuade by publishing and distributing newspapers and leaflets, holding meetings, marching and communicating in the public streets, and peaceful picketing have long been held protected by the First Amendment. *E.g., Edwards v. South Carolina*, 372 U.S. 229 (1963) (marching and demonstrating); *Hague v. CIO*, 307 U.S. 496 (1939) (use of streets and other public places); *Schneider v. State*, 308 U.S. 147 (1939) (distributing leaflets); *Thornhill v. Alabama*, 310 U.S. 88 (1940) (peaceful picketing). When exercised to petition for redress of grievances involving "public issues," such methods of First Amendment expression and association "res[t] on the highest rung of the hierarchy of First Amendment values." *Carey v. Brown*, 447 U.S. 455, 466-67 (1980).

In a series of important cases beginning before the Claiborne County boycott, the United States Court of Appeals for the Fifth Circuit applied these established First Amendment principles to boycotts organized during the civil rights movement and contemporaneous with the almost identical activities involved in this case.[24] Those cases confirmed that the First Amendment protects peaceful picketing of businesses undertaken with the object of eliminating racial discrimination in the stores themselves. *Smith v. Grady*, 411 F.2d 181 (5th Cir. 1969); *NAACP v. Thompson*, 357 F.2d 831 (5th Cir.), *cert. denied*, 385 U.S. 820 (1966); *Kelly v. Page*, 335 F.2d 114 (5th Cir. 1964). *See Smith v. City of Montgomery*, 251 F. Supp. 849 (M.D. Ala. 1966); *In re Wright*, 251 F. Supp. 880 (M.D. Ala. 1965); *McMeans v. Mayor's Court*, 247 F. Supp. 606 (M.D. Ala. 1965). In *Machesky*

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[24] For a comprehensive analysis of the state and federal court decisions concerning political boycotts, and a discussion of the chancellor's opinion in this case, see Note, *Political Boycott Activity and the First Amendment*, 91 HARV. L. REV. 659 (1978). *See also* Comment, *The Consumer Boycott*, 42 MISS. L.J. 226 (1971); Note, *The Common-Law and Constitutional Status of Anti-discrimination Boycotts*, 66 YALE L.J. 397 (1957).

v. Bizzell, 414 F.2d 283 (5th Cir. 1969), the court held that the First Amendment "clear[ly]" (*id.* at 287) protected a boycott not limited to redress of discrimination in the store itself, but, as in this case, seeking

> "equal employment by the city, equal job opportunities in business, use of courtesy titles, improved city services in Negro areas, fair treatment by police, representation on various public boards and agencies, and dialogue with elected officials." *Id.* at 285.

In *Machesky*, Judge Bell found it dispositive that the Greenwood, Mississippi, civil rights movement was exercising "public rights"—"rights which determine the composition of government and the direction of government policy." *Id.* at 288-89.[25]

In upholding a preliminary injunction against enforcement of the supersedeas bonding requirement in this very case, the Fifth Circuit observed:

> "At the heart of the Chancery Court's opinion lies the belief that the mere organization of the boycott and every activity undertaken in support thereof could be subject to judicial prohibition under state law. This view accords insufficient weight to the First Amendment's protection of political speech and association . . . . [The] dispute with the white merchants and city government of Port Gibson and all of the picketing, speeches and other communication associated with the boycott were directed to the

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[25] In *Machesky*, an action brought pursuant to 42 U.S.C. § 1983, the federal plaintiffs were state court defendants who sought a federal injunction against pending state court proceedings. The case was decided prior to *Mitchum v. Foster*, 407 U.S. 225 (1972)—holding Section 1983 to be an exception to the anti-injunction provisions of 28 U.S.C. § 2283—but Judge Bell recognized the federalism concerns involved in such federal court intervention in state court proceedings. Accordingly, he held Section 2283 should give way only "in those extraordinary cases"—such as *Machesky*—"where the federal injunction is necessary to vindicate *clear First Amendment rights*." 414 F.2d at 287 (emphasis supplied).

> elimination of racial discrimination in the town. This differentiates this case from a boycott organized for economic ends, for speech to protest racial discrimination is essential political speech lying at the core of the First Amendment."

Henry v. First Nat'l Bank, 595 F.2d 291, 303 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980) ("*Henry II*").[26]

In describing the boycott in this case, the Mississippi Supreme Court referred to Miss. Code Ann. § 97-23-83, which makes it a criminal offense "to threaten with bodily harm, intimidate or coerce another person to prevent said person" from doing business with another. The court held that statute was violated by "the coercion, intimidation, and threats which were a part of the boycott activity." App. 24a. Apart from the fact that the court did not identify any Petitioner or anyone else as a violator, the statute itself would ban peaceful nonviolent efforts to enforce a boycott and is clearly void for overbreadth.

When a political boycott is enforced, as here, by such nonviolent methods as "social ostracism, vilification, and traduction," use of these methods might conceivably result in actionable libel or slander, but does not by itself create liability for any resulting business harm. If the First Amendment permitted only polite discourse upon abstract intellectual propositions, it would be of little value to American society. As this Court noted in *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971):

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[26] *See also NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 302 (1964), where a unanimous Court rejected Alabama's effort to oust the NAACP from that State based upon the claim (among others) that it was "'organizing, supporting and financing an illegal boycott'" of Montgomery's bus system. In dictum, Justice Harlan characterized as "doubtful" the "assumption that an organized refusal to ride on Montgomery's buses in protest against a policy of racial segregation might, without more, in some circumstances violate a valid state law." *Id.* at 307.

> "In sustaining the injunction, . . . the Appellate Court was apparently of the view that petitioners' purpose in distributing their literature was not to inform the public, but to 'force' respondent to sign a no-solicitation agreement. The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper. See *Schneider v. State, supra; Thornhill v. Alabama*, 310 U.S. 88 (1940). Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability."

Similarly, the "vilification" of persons as "Uncle Toms" is entitled to no less protection than that afforded the vilification of employees as "scabs" in *Letter Carriers Branch 496 v. Austin*, 418 U.S. 264 (1974).[27] Like other peaceful exercises of Petitioners' First Amendment rights to "enforce" the boycott, this sort of vilification and "traduction" cannot form the basis for liability in this case.

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[27] Although in *Letter Carriers* the issue was whether state tort law was preempted by provisions of federal labor law, the statutory protection was simply a codification of this court's constitutional principles enunciated in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). *See* 418 U.S. at 280-81, *citing Linn v. Plant Guard Workers*, 383 U.S. 53 (1966).

II. THE MISSISSIPPI SUPREME COURT'S RULING THAT THE ENTIRE BOYCOTT WAS UNLAWFUL AND THAT ALL BOYCOTT PARTICIPANTS WERE VICARIOUSLY LIABLE BECAUSE A FEW INCIDENTS OF "FORCE, VIOLENCE AND THREATS" WERE "PRESENT" DURING THE BOYCOTT'S MULTI-YEAR DURATION IS FACTUALLY UNSUPPORTED AND IN ANY EVENT IS CONSTITUTIONALLY WRONG.

The Mississippi Supreme Court's conclusion that the entire boycott was an unlawful conspiracy for which all Petitioners were liable may rest solely on its finding that a few incidents of physical violence were "present." If so, that conclusion cannot stand either on the facts of record[28] or as a proposition of First Amendment law. Unless this Court reverses, every person engaged in political protest runs the risk of being made an insurer for the actions of everyone else who participates. Any such rule would impermissibly chill the exercise of the vital First Amendment rights of expression and association described above.

A. The Claiborne County Boycott Was a Peaceful and Voluntary Boycott. Most of the Sporadic Incidents of Violence That Occurred During the Time of the Boycott Were Not Found To Have Been Committed by Identified Boycott Participants, and Were Not a Principal Cause of Its Success or of any Business Harm to Respondents.

As the merchants themselves conceded in the court below,[29] witness after witness testified that in 1966 Black

[28] In First Amendment cases on review from state courts, this Court "of course make[s] an examination of the evidence to ascertain independently whether the right has been violated." *Feiner v. New York*, 340 U.S. 315, 316 (1951). *See also id.* at 322 n.4 (Black, J., dissenting); *In re Primus*, 436 U.S. 412, 434 (1978); *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-85 (1964); *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963).

[29] Brief for Appellees Claiborne Hardware Co., *et al.* at 12: "Most of the witnesses testified that they voluntarily went along with the NAACP and their fellow black citizens in honoring and observing the boycott because they wanted the boycott."

persons in Claiborne County were sufficiently impatient with the continued denial of their civil rights that they voluntarily refused to have any further economic dealings with Respondents. *E.g.*, R. 5855-56, 6066-67, 6227, 6641, 6737, 6848, 6864, 12419, 13543-44. As one of the employees of the county Headstart Program testified:

> "I just stayed out of the stores, because I had my own personal reasons to stay out of the stores. There were some things I really wanted, and the things I wanted were the right to vote, the right to have a title—Mrs. or Mr. or whatever I am, and not uncle or aunt, boy or girl. So that's what I wanted. And if I wanted a job—a qualified job, I wanted to have the opportunity to be hired. Not hired because I'm black or white, but just hired." R. 15476.

Neither the Mississippi Supreme Court nor the chancellor made any finding that violence was critical to the effectiveness of this boycott. While the former adopted the latter's finding that "the volition of many black persons was overcome out of sheer fear," the context suggests that this may have meant fear of "ostracism, vilification and traduction" rather than fear of physical violence. In any event, the record does not support any finding that fear of any type of conduct by other boycott participants was important to the boycott's success.

The "thread of fear and violence" in this case was woven by counsel for Respondents in their suggestive examination of 106 individual defendants. These defendants (including many of these Petitioners) were subjected to leading, repetitive, browbeating, and almost completely unchecked examination.[30] These witnesses were asked over and over whether they knew or had

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[30] One example, perhaps the most egregious, is nevertheless illustrative of the conduct of the adverse examination. Petitioner Griffin, who was 59 years old at the time of trial, was asked by counsel for Respondents, "Have you ever had a frontal lobotomy?" R. 2335. The objection was overruled. R. 2335.

heard of the same handful of incidents of unlawful activity alleged to have occurred in Port Gibson from 1966 to 1970. In some cases, there was never any foundational evidence that unlawful activity ever took place.[31] Most of the defendants (and the few other non-party witnesses called by Respondents) testified that they did not know about and had never heard of most of these incidents. *E.g.*, R. 4623-32; 5771-75; 5898-5901; 5987-93; 6129-37; 6621-26; 6790-93; 6966-70; 7658-62; 7855; 7905; 8052-60; 8276-81; 8497-8500; 9058-68; 9710-12; 10517-23; 11705-08; 11955-66; 12088-93; 12884-92; 13128-34; 13426-46. On the contrary, the record establishes with remarkable clarity the general *absence* of fear in the community.[32]

In fact, out of the entire 16,000 pages of testimony adduced in this case, the chancellor identified only twelve incidents of "enforcement" activity even arguably connected to the boycott, which the Mississippi Supreme Court quoted verbatim. App. 34b-37b, 15a-18a.

Only three of these episodes involving physical violence were connected by the chancellor to any of the Pe-

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[31] For example, Petitioner Katie Wells, among other witnesses, was asked

> "Q. Did you hear about [Willie Myles'] house being burned down because he violated the boycott?
> "A. I sure didn't." R. 4208.

Myles himself testified that his house burned down before the boycott ever began. R. 13773.

[32] *E.g.*, the testimony of Sara Currie (R. 6192), Amos Newsome (R. 6607-08), Clyde Harvey (R. 6850), John Durham (R. 6963-64), Horace Lightfoot (R. 7154-59), Mary Lee Moore (R. 7536-37), Alonzo Atlas (R. 8336), William Owens (R. 8496-97), Eddie Burrell (R. 9057-58), Mary Ella Dee (R. 9501), Calvin Blackburn (R. 11562), Willie Beasley (R. 12088), Ernest Brown (R. 12447), Albert Jackson (R. 12574-75), Jasper Coleman (R. 13789-91), Laura Cullins (R. 14015-18), Geneva Durham (R. 11708-09), Ira Thomas (R. 13346-47), Harvey Ellis (R. 11953) and Helen Beasley (R. 11987).

titioners; in two of these cases, the chancellor failed to make any findings identifying who had committed the act.

(1) James Gilmore asserted that shots were fired into his house from a car in which three Petitioners were riding on August 22, 1966, and that this incident occurred because he had continued to trade in white stores. But a criminal conviction for this incident was reversed on appeal, retrial resulted in a hung jury, and the chancellor never resolved the question of the identity of the assailant. App. 16a.

(2) The chancellor noted that Petitioner James Bailey warned Willie Butler about not observing the boycott and that, when she continued, he "destroyed her flower garden by way of punishing her." App. 17a. The only testimony about this incident was that of Bailey himself. His testimony was that nobody told him to tear up the flowers, that Mrs. Butler continued to buy groceries from white merchants, and that, for all Bailey knew, she did not even know that he had pulled up her flowers. R. 3732, 3741, 3660.

(3) The chancellor's description of Emerson Davis' testimony contained one incident completely unconnected to the boycott; another involving protected activity; and only one arguably involving unlawful acts related to the boycott. The chancellor referred to Davis' testimony that James Bailey said that he was going to kill Davis. But this episode is not connected to the boycott; Davis testified without contradiction that this grew out of an argument he and Bailey had had. Davis testified that Black people called him an "Uncle Tom"—before and after he refused to join the boycott. This is protected speech, and the fact that it preceded the boycott makes it irrelevant anyway. Finally, the chancellor referred to Davis' testimony that two Petitioners—along with three other persons—beat him up because he did not observe the boycott. But Rudy Shields, one of the accused Peti-

tioners, testified that the fight occurred because Davis had pulled a gun on him (R. 5019); Davis himself testified that during the course of this episode he was carrying both a knife and a gun. R. 13868-70. The chancellor did not resolve this conflicting testimony.

The remaining incidents lack any significance. In some, no act of physical violence is described. In none is any individual Petitioner identified as having committed any alleged unlawful act.

(4) The chancellor evidently concluded that Jasper Coleman's tires were slashed by unnamed persons because he did not observe the boycott. App. 18a. The only testimony on this incident comes from Coleman. He testified that his tires were slashed when he left his car in front of someone else's house for an all-night poker game. R. 13792. Several weeks later he heard a *rumor* that this was somehow related to the boycott. R. 13796. However, Coleman testified that he had never been threatened about trading with the white merchants (R. 13791, 13798); that he was not afraid to trade with the white merchants (R. 13782, 13791); and that he continued to trade with the white merchants. R. 13796-97.

(5) In the Laura Cullins incident, the chancellor found that "shotgun pellets were fired into her home." App. 16a. He implied, but did not find, that the shots were fired because she was not observing the boycott. Nor did he find who fired the shots. Laura Cullins testified that she had no idea who had done so (R. 14014) and that in any case, she was not intimidated by it. R. 14011-14.

(6) To the same effect is the chancellor's treatment of damage to Muriel Cullins' car. App. 16a-17a. Again, there is no evidence to support any inference that this vandalism was related to the boycott. Muriel Cullins testified that he did not know who damaged his car and that he only "assumed" that it was related to the boycott. R. 14063.

(7) Eddie Lewis (App. 18a) testified that someone never a defendant in this case stole a half-pint of whisky from him that he had bought from a white liquor store. R. 13742-44.

(8) The chancellor stated that "a carload of young blacks began following" Willie Myles, but he did not indicate why, and the young blacks were never identified. App. 18a. In fact, although Myles was told by someone else that these persons followed him because he traded in white stores (R. 13778-79), Myles himself testified that they did not even live in Claiborne County. R. 13732-33.

(9) The chancellor described a purported attempt by "store watchers" to prevent Mrs. Cox from entering the O. K. Cleaners. Mrs. Cox' testimony of that "incident" was that she and her husband drove to O. K. Cleaners and she walked over to enter the cleaners. Outside the cleaners she saw someone she knew and she asked that Black person if she should go in. The person advised her not to, and she went and told her husband what had occurred. She testified that she was not afraid. Without anything more occurring, Mr. Cox went and got a policeman, who escorted Mrs. Cox into the cleaners. R. 13628, 13671-73. No act or threat of physical violence occurred. The chancellor also states that shots were fired into the Cox home and at Mr. Cox, but he does not find who fired them. App. 17a.

(10) The chancellor states that "there is evidence in the record" that Preacher White was beaten for not honoring the boycott. App. 17a-18a. Preacher White died before trial. There is no competent evidence that this incident ever took place or, if it did, that it was linked with any Petitioner. As the chancellor himself comments: "Mrs. Leesco Guster, one of the appellants, testifying as to Preacher White's alleged experience as a boycott breaker, said, 'It was just talk . . .'" App. 19a.

(11) The chancellor sought to link these sporadic, and largely unattributed, events into a coherent pattern by repeated reference to Charles Evers' April 1969 remark that "If we catch any of you going in any of them racist stores, we're gonna break your damn neck." *See* App. 27b. This emotional rhetoric, employed in a public speech following the shock of Dusty Jackson's killing in an encounter with white policemen, cannot serve the purpose assigned to it.[33] Evers' tape-recorded speech two days earlier, also transcribed in the record, specifically counsels Black persons against the use of violence in the strongest terms. Ex. C-13 (R. 998, 1005, 1091-1109). Moreover, this April 1969 remark postdates every incident referred to by the chancellor, and thus hardly serves the unifying purpose the chancellor consistently attributed to it.[34] In any event, this Court has recognized that even highly charged political rhetoric about emotional political issues does not lose its First Amendment protection. *Watts v. United States*, 394 U.S. 705, 708 (1969).

(12) The chancellor and the Mississippi Supreme Court apparently thought the fact that the NAACP provided attorneys to arrested blacks was evidence of improper and perhaps unlawful behavior. App. 19a. If so, it is an astonishing idea. Ascribing liability to the organization that provides a lawyer to boycott participants accused of

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[33] This shooting also had its colonial parallel in the Boston Massacre of 1769, which began with the actions of "irresponsible youths on the street; but it closed with the fatal shooting of five men and the wounding of several others by the [British] soldiers." SCHLESINGER at 180. "The intense feeling aroused by the Massacre undoubtedly put new life into the non-importation cause in New England . . . ." *Id.* at 181.

[34] One witness, Sheriff McKay, testified that Evers also employed an identical remark in the April 1, 1966 speech launching the boycott. This testimony is uncorroborated by that of any other witness, while the April 1969 remark is corroborated by contemporaneous documentary evidence (Exhibit C-43; R. 4919, 4921-22, 4923), as well as testimony of countless witnesses. The Mississippi Supreme Court avoided dating the remark. *See* App. 19a.

a crime would amount to an effective denial of the First Amendment right of free association, *see NAACP v. Button*, 371 U.S. 415 (1963), and make a mockery of the Sixth Amendment right to counsel.[35]

The foregoing incidents, which appear to be nothing more than random entries in the Claiborne County police blotter over a period of at least three years, constitute the sole "thread" by which the chancellor and the Mississippi Supreme Court tied allegedly unlawful activity to the Claiborne County boycott. As we have shown above, this thread is thin indeed. The courts below found only one unlawful act to have been committed by any of these Petitioners—the trampling of a flower garden unbeknownst to its owner or, apparently, to anyone else. This action hardly proved instrumental to the success of the boycott, and indeed none of these incidents (whoever may have been responsible for them) were ever shown to have caused the "victims" to have stopped patronizing Respondents' stores.[36] The plain fact is that the success of the boycott was a direct result of the exercise of the peaceful forms of First Amendment activity described above.

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[35] This is not the first time the NAACP or its officers or representatives have sought the vindication of this Court for the exercise of protected rights of associational expression on their own behalf and on behalf of those who seek peacefully to advance the goals of racial equality under the law. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293 (1961); *NAACP v. Button*, 371 U.S. 415 (1963); *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963); *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288 (1964).

[36] Of the eleven alleged "victims" of boycott-related violence or threats, seven testified that they continued to trade with the white merchants: Gilmore (R. 13725), L. Cullins (R. 13996), M. Cullins (R. 14038, 14099), Myles (R. 13751-52), Coleman (R. 13782), Davis (R. 13866), and Lewis (R. 13744). There is no evidence whether any of the remaining four ceased trading with white merchants, or if so, for what reason.

B. Most of the 91 Individual Petitioners and Petitioner NAACP Engaged Solely in Peaceful Boycott Activities, and May Not Constitutionally Be Held Liable for Any Tortious Acts of a Few.

Twelve unlawful acts committed by a handful of the participants in the boycott, let alone one or a few, would not be constitutionally sufficient to support the ruling of the court below that the entire boycott was unlawful and that all the participant Petitioners were liable in damages for any resulting harm. As to 30 of the 91 individual Petitioners, there is no evidence except that they were NAACP members or attended NAACP meetings, refused to patronize some or all of the Respondents' stores, or participated in one or more marches.[37] For

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[37] *I.e.*, Kenneth Barber, Helen Beasley, Calvin Blackburn, Irna Rae Camphor, W. E. (Billy) Camphor, Alberta Coleman, Charles Davis, Mary Ella Dee, Geneva Durham, Johnny Frank Durham, Willie Jackson, Jesse Johnson, Roscoe Johnson, Bernice Lee, A. E. (Edward) Lee, Margaret Liggins, Mary Lee Moore, Amos Newsome, Leona Owens, Even Roberson, William (Willie) Roberson, Mary Ross, Odessa Ross, William Matt Ross, Oliver Shinall, Ira Thomas, Carl Thompson, Jr., Alex Warner, Ernestine Williams, and Arthur Wyatt.

For example, Calvin Blackburn, an NAACP member, honored the boycott, and appears to have marched and to have helped keep marches orderly. R. 1252, 2073, 11557-58. Irma Rae Camphor was an NAACP member but indicated that she attended only two or three meetings. R. 7472. She appears to have honored the boycott and participated in the April 1969 Dusty Jackson march, and does not appear to have picketed or watched stores. R. 4439-40, 7475, 7486. W. E. Camphor, retired school teacher and NAACP member since 1937, honored the boycott and marched but apparently did not picket. R. 4440, 5852-53, 5868. Roscoe Johnson was an NAACP member, attended meetings, boycotted, and participated in the April 1, 1966 march but did not picket or watch stores. R. 1870-71, 4464, 10022, 12822, 12825, 12828, 12844. Amos Newsome was an NAACP member, attended NAACP meetings, and appears to have supported the boycott; there is no evidence that he marched, picketed, or watched stores. R. 6561-62, 6575-78, 6609, 6615, 6627, 6677, 8654. Matt Ross, vice president of the Claiborne County NAACP chapter (R. 10642), was a leader in the boycott movement and marched at least twice. R. 4483, 6679. Oliver Shinall did not testify; there was some testimony that he partici-

another 39 of the individual Petitioners, the only other evidence is that they engaged in picketing, gave speeches, encouraged others to boycott, or disseminated leaflets.[38] As for the remaining individual Petitioners about whom there is some record evidence—competent or not—of involvement in any arguably unlawful activity, the case

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pated in the boycott and two marches. R. 6680. Carl Thompson, Jr., the funeral director, was an NAACP member since the 1950's. R. 1286-87. He boycotted, and Police Chief Porter says he marched. R. 2074.

[38] *I.e.*, Alonzo Atlas, Bill Beasley, Marjorie Brandon, Janie Brown, Eddie Burrell, James Burrell, Robert Butler, Jr., Arthur Lee Camphor, Charles Collier, James Collier, Alexander Collins, Geneva Collins, Thelma Crowder, Dan Currie, Sarah Jane Currie, James DeVoual, Harvey Ellis, Katie Ellis, James Gray, Walter Griffin, Sr., Bernard Gusta, Clyde Harvey, Jim Holt, Julia Coleman Jones, Nathaniel Jones, Samuel Jones, Jr., Julia Lucas, Nathaniel Martin, Leander Monroe, Johnny Moore, William Owens, Henry Patton, Jr., Marguerite Thompson, Mack Tisdale, Thelma Walker, Eddie Walls, Jr., Carl Lee (Boone) Wells, Katie Beatrice Wells, and Aaron Wilson.

Alexander Collins, for example, was a leader in the boycott movement and helped draft and present the demands that preceded the boycott. R. 4658-61, 9992-93. He also gave speeches in favor of the boycott. R. 2356, 2782, 3665. Neither Charles nor James Collier testified but Barbara Ellis said that on the first day of the boycott they were in front of her store "grabbing people and telling them they couldn't go in the stores and trade"; she did not recall that they were there after that first day. R. 1204-05. Thelma Crowder was said to have put a picket sign on a child and to have talked to people about the boycott. R. 782-83. Dan Currie, 80 years old at the time of the trial, was said to have been a store watcher, to have told people not to trade with whites, and to have lined up pickets. R. 1205-06. Julia Coleman Jones had been a member of the NAACP in Port Gibson since around 1950 who attended meetings. R. 1270, 2811-12. She honored the boycott and marched but did not picket. R. 4464. She was said by Barbara Ellis to have told others to boycott. R. 1207-08, 6319-26. Marguerite Thompson, state recording secretary of the NAACP, was said to have actively promoted the boycott. R. 2832-33. Thelma Walker was said to have picketed. R. 2075.

for their involvement is extremely weak.[39] And there was no evidence that Petitioner NAACP ever organized, sponsored, or condoned violence or threats of violence in connection with the Claiborne County boycott or any other civil rights activity.[40] It is neither disputed nor denied that the Claiborne County boycott was organized with the strong support of Petitioner NAACP. But the NAACP's boycott activities, as abundantly demonstrated above, were constitutionally protected forms of non-violent political expression and association.

On this record, finding these 92 Petitioners vicariously liable for all lost patronage associated with the boycott, because of the mere "presence" of the few sporadic episodes over a three-year period described above, is an un-

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[39] For example, in describing several alleged "crimes" relating to the boycott, Sheriff McKay indicates that a Henry Anderson was charged with assault and battery but apparently was never tried. R. 1376, 1378, 1380-81, 1391-92. It is not clear that this incident involved Petitioner Henry Anderson, Sr. (he was not asked about it in his testimony, R. 8347-8419); further, there is no showing that this incident was in fact related to the boycott. Emerson Davis, the one who allegedly complained about this incident, testified that Henry Anderson never said anything to him about the boycott. R. 13881, 13943. Joseph Mack (Buster) Barber, a car salesman at Allen Motor Company, was said by James Hudson to have physically stopped customers from entering stores. R. 803. Hudson indicates that Barber told one of Hudson's customers as the customer was leaving the store "You know this store is boycotted . . . you're not supposed to go in there. Don't go in there any more," and then Barber "turned around, I believe, and walked off." R. 655-56. Hudson also indicated that Barber was among a group of people that "stopped" another customer but does not specifically indicate that Barber said or did anything. R. 647-54; Ex. D-1 (R. 753, 754). Petitioners Bilbo Smith and Marcus Jones were said to have threatened to take a package from someone who had emerged from a boycotted store but did not take it. R. 646. Police Chief Porter testified that George Henry Walker told Wes Butler that Butler "had better not go in" a certain store. R. 2178.

[40] The only evidence on this point is to the contrary. *See* R. 15618-19.

constitutional infringment on their rights of political expression and association. This Court's decisions have established "with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments." *Abood v. Detroit Board of Education*, 431 U.S. 209, 233 (1977).[41] As the Court has recently observed, the rights of association are themselves critical in guaranteeing the rights of individual expression on public issues, because effective advocacy on those issues "is undeniably enhanced by group association." The rights of expression and association "overlap and blend; to limit the right of association places an impermissible restraint on the right of expression." Traditional theories of group liability are constitutionally suspect when applied to political assembly and expression:

> "There are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, but political expression is not one of them."

Citizens Against Rent Control v. City of Berkeley, 102 S. Ct. 434, 437, 439 (1981). The leaders of the colonial boycotts were prepared to concede that the Boston Tea Party was a regrettable and unlawful act, but they argued strongly that this did not affect the legality of the boycott movement. For example, Jefferson "admitted that the actions of the exasperated participants in the Boston Tea Party were not strictly regular, that these men did

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[41] This protection for the rights of association has deeply established roots. *See De Jonge v. Oregon*, 299 U.S. 353 (1937). In *De Jonge*, the defendant was convicted of "criminal syndicalism" merely for participating in a meeting of the Communist party. Chief Justice Hughes noted that "[a] like fate might have attended any speaker, although not a member, who 'assisted in the conduct' of the meeting." *Id.* at 362. The "broad reach" of the statute rejected in *De Jonge* closely parallels the theory of civil conspiracy employed in this case. *See id.* at 362-63.

wrong in destroying the 'obnoxious commodity,' and that they were properly amenable to the laws of the land, that is, to the laws of Massachusetts Bay." MALONE at 187. But Jefferson continued to support the boycott and was a member of a local committee to enforce it.

The decisions of this Court are faithful to this view. The Court has ruled that an individual associating with others to advance political beliefs and ideas is not responsible for another's illegal acts absent a highly particularized showing of individual responsibility. *Noto v. United States*, 367 U.S. 290, 299-300 (1961). More than mere knowledge of illegal goals or means is required. *Elfbrandt v. Russell*, 384 U.S. 11, 16 (1966). There must be shown "a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims." *Healy v. James*, 408 U.S. 169, 186 (1972).[42] Those who participate in an organization's protected activities to advance particular beliefs—even with knowledge of other, perhaps illegal, activities or goals—do not lose constitutional protection unless they specifically intend illegal conduct. *United States v. Spock*, 416 F.2d 165, 173 (1st Cir. 1969).

Noto, *Healy*, and *Spock* hold that joint and several liability could not have been imposed on all the Petitioners—or any of them—except upon findings that each of them knew unlawful conduct was being used to further the boycott and that each had the specific intent to further the boycott by illegal means. Neither of the lower courts made any of these constitutionally necessary findings. The Mississippi Supreme Court merely stated that "the present state of facts" indicates an "agreed use of illegal force" (App. 23a), and, quoting the chancellor, indicated

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[42] *See also United States v. Robel*, 389 U.S. 258, 266 (1967); *Keyishian v. Board of Regents*, 385 U.S. 589, 606-07 (1967); *Aptheker v. Secretary of State*, 378 U.S. 500, 510-11 (1964); *United States v. Dellinger*, 472 F.2d 340, 392-94 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973).

that "certain of the defendants, acting for all others, engaged in acts of physical force and violence . . . ." *Id.* at 20a. These conclusory statements are hardly the "conscious determination[s] of the existence or nonexistence of the critical fact" that are required in constitutional cases. *Time, Inc. v. Firestone*, 424 U.S. 448, 463 (1976). *See also Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 293 (1941) ("[I]t is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality"). In the absence of the particularized findings of culpability required by the First Amendment, this Court should reverse the Mississippi judgment holding the entire boycott illegal and imposing damage liability upon all the Petitioners.

C. It Was Constitutionally Impermissible To Hold Petitioners Liable in Damages for Business Losses of Respondents That Resulted from Peaceful Enforcement of a Political Boycott.

In any event, it was wrong to assess damages for all the results of the boycott, including protected First Amendment activity. It is a fundamental principle of tort law that damages for unlawful acts may be recovered only upon proof of causation. W. PROSSER, LAW OF TORTS § 41, at 236 (4th ed. 1971). That principle has constitutional significance where, as here, the defendants have engaged in peaceful protest protected by the First Amendment and where this peaceful activity was at least the predominant factor in the success of the boycott. As the Court has recently held, "Where a government restricts the speech of a private person, the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest." *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980). *See also NAACP v. Button*, 371 U.S. 415, 438 (1963).

While damages may be recovered in state courts for tortious or otherwise illegal conduct, "the permissible scope of state remedies in this area is strictly confined to the direct consequences of such conduct, and does not include consequences resulting from associated peaceful picketing . . . ." *United Mine Workers v. Gibbs*, 383 U.S. 715, 729 (1966). *See also United Mine Workers v. Pennington*, 381 U.S. 657, 671-72 (1965); *Teamsters Local 20 v. Morton*, 377 U.S. 252, 259-62 (1964) (damage award under state law for unlawful union activity cannot include losses caused by simultaneous union activity protected by federal labor law). This rule is of special importance when illegal conduct is present with activity entitled to constitutional protection. In *Stryjewski v. Local Union No. 830*, 451 Pa. 550, 553-54, 304 A.2d 463, 465-66 (1973), for example, dealing with an award of damages allegedly arising from mass picketing and associated violence in a labor context, the Pennsylvania Supreme Court, following *Gibbs*, reversed a lower court judgment holding defendants liable for all the damages caused by the picketing:

> "[I]t must be noted that although a state court has power to assess monetary damages, such damages are constitutionally permissible only where they compensate an injured party for damages sustained as a result of violent or otherwise unlawful picketing. No damages are recoverable where the activity complained of consists of constitutionally protected peaceful picketing.
>
> ". . . .
>
> "Our task is not merely to ensure that the damages sustained were proximately caused by the challenged picketing and other activity, but rather is to ensure that such damages, to be constitutionally compensable, resulted *solely* from unlawful and violent activities which are without the protection of the First Amendment." (Emphasis added.)

Accord, United Aircraft Corp. v. International Association of Machinists, 161 Conn. 79, 98, 285 A.2d 330, 341

(1971), *cert. denied*, 404 U.S. 1016 (1972) ("a state court may properly award damages only for losses arising from tortious conduct and not for losses arising from protected strike activity").

It is undisputed that the chain of events collectively referred to as "the Claiborne County boycott" consisted primarily of constitutionally protected peaceful marching, orderly picketing, distribution of leaflets, giving of speeches, and individual attempts at persuasion and nonviolent enforcement described above. It is undisputed that Black persons made voluntary decisions to withhold patronage from boycotted businesses; even the Mississippi Supreme Court opinion recognizes that the enforcement devices it erroneously found unlawful formed only "a part of the boycott activity" that "contributed" to its success. App. 24a. Yet the judgment under review does not even attempt to parse the merchants' business losses and indeed makes no finding that acts or threats of violence by any of these Petitioners caused any of these losses.[43] Instead, the Mississippi Supreme Court simply concluded that the merchants were entitled to recover for any damages "resulting from the boycott." App. 35a. That conclusion was constitutional error. As the foregoing decisions of this Court make clear, the only damages for which Respondents could have recovered would have been business losses caused by unlawful conduct for which Petitioners had been proven responsible.

---

[43] Nor does the record contain any factual basis on which appropriate allocation can be made. The merchants' principal evidence on causation was the opinion testimony of an economist proceeding under the assumption that all business losses suffered by the merchants from the boycott were recoverable. App. 28a-35a. The merchants made no effort at trial to show that any particular loss was incurred as a result of the purported campaign of violence.

III. THE INJUNCTION FLATLY PROHIBITING PEACEFUL FIRST AMENDMENT EXPRESSION AND ASSOCIATION IS AN UNCONSTITUTIONAL PRIOR RESTRAINT.

The chancellor's decree flatly bans all Petitioners from "[p]ersuading, soliciting, advising, threatening, coercing, intimidating and restraining any person" to withhold patronage from the merchants. His decree also prohibits all future "[p]icketing or patroling" of the merchants' stores. App. 19g. Whatever the constitutional validity of the damage liability assessed against all Petitioners, the injunction outstanding in this case is an invalid prior restraint of activities clearly protected by the First Amendment.

Prior restraints are presumptively unconstitutional; they are "the most serious and the least tolerable infringement" on First Amendment rights. *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1976). In his landmark opinion for the Court in *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931), Chief Justice Hughes concluded that "it has been generally, if not universally, considered that it is the chief purpose of the guaranty [of a free press] to prevent previous restraints upon publication." That observation is equally true and powerful with respect to peaceful picketing, distributing leaflets, and speaking. *E.g.*, *Nebraska Press Assn. v. Stuart*, *supra*, 427 U.S. at 570; *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 418-19 (1971).

While the Court has not said that prior restraints may never be upheld, it has held that the circumstances that would justify an injunction against speech, or peaceful picketing or distributing leaflets, would have to be extraordinary. It would have to be shown that the challenged activity will "inevitably, directly, and immediately cause the occurrence" of a serious evil the state may legitimately proscribe.[44] Here, however, the merchants

[44] *See New York Times Co. v. United States*, 403 U.S. 713, 726-27 (1971) (Brennan, J., concurring). *See also id.* at 730 (Stewart

made no showing, and the Mississippi courts made no finding, that the continued exercise of Petitioners' rights of peaceful speech and assembly would cause a serious substantive evil that Mississippi might legitimately proscribe. The chancellor found only "that the complainants are entitled to a permanent injunction." App. 68b. The Mississippi Supreme Court did not analyze the injunction at all in its main opinion and, in denying Petitioners' rehearing petition directed to this issue, issued no opinion at all. App. 1e.

The chancellor's injunction cannot be justified on the basis of the ambiguous statement that an "atmosphere of fear . . . prevailed among Blacks from 1966 until 1970," App. 35b. If that is the basis for the injunction issued in 1976, six years later, it is obviously insufficient. Even apart from the considerable lapse in time, such a conclusion begs the questions whether and why future peaceful speeches, leaflets, marches, and picketing would cause any substantive evil at all. Nor can the injunction be justified on the basis of fear induced in Black persons who patronized white stores by "vilification and ostracism" (App. 37b) or "[i]ntimidation, threats, social ostracism, vilification, and traduction" (App. 39b), or the finding (App. 19b) that

> "The names of black citizens who were seen trading with whites were read out at NAACP meetings, and these names were published in a mimeographed tabloid called the 'Black Times.' They were branded as traitors to the black cause, called demeaning names, and socially ostracized for merely trading with whites." [45]

& White, JJ., concurring) (disclosure will not "surely result in direct, immediate, and irreparable damage to our Nation or its people"); *Nebraska Press Assn. v. Stuart, supra*, 427 U.S. at 569-70 (refusing to rule out possibility of showing "the kind of threat to fair trial rights that would possess the requisite degree of certainty to justify restraint").

[45] Compare paragraph 11 of the Association adopted by the unofficial assembly known as the First Continental Congress in 1774, quoted at page 20 *supra*.

None of those pejorative labels justifies prior restraint of nonviolent speech, marching, picketing and publication.

The lower courts may have fashioned this extraordinarily overbroad injunction in reliance on the Fifth Circuit's language in *Smith v. Grady*, 411 F.2d 181 (5th Cir. 1969), App. 23a, or upon this Court's decision in *Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941). App. 20a. Their reading of *Smith v. Grady* is simply wrong.[46] And as the Fifth Circuit held in *Henry II*,[47] the *Meadowmoor* case is clearly inapplicable here.

In *Meadowmoor*, this Court upheld an injunction that barred all labor picketing, including peaceful protesting. The circumstances of that case amounted literally to a labor war, in which violence was "neither episodic nor isolated." 312 U.S. at 295. The Court cautioned that the decision was not to become the basis for a broader rule. It warned that the "[r]ight to free speech in the future cannot be forfeited because of dissociated acts of past violence." *Id.* at 296. Justice Frankfurter, the author of the *Meadowmoor* opinion, wrote ten years later that *Meadowmoor*'s restrictions on protected activity were "designed to prevent recurrence of violence." *Dennis v.*

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[46] In that case, the district judge *permitted* peaceful picketing in his injunction. *See* 411 F.2d at 183-84. On appeal, Judge Coleman held that the district judge abused his discretion in enjoining picketers from "utter[ing] any sounds," emphasizing that "[t]he decisive consideration is that *total denial* of free speech is never to be approved." *Id.* at 189 (emphasis in original).

[47] In *Henry*, the Fifth Circuit concluded that the chancellor's sweeping injunction

> "overshoots the mark and the situation cannot be saved by *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 1941, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, a case premised on violence of an intensity and duration in no way present here, or at least on the record before the district court." 595 F.2d at 304, *quoting Machesky v. Bizzell*, 414 F.2d 283, 290-91 (5th Cir. 1969).

United States, 341 U.S. 494, 530 (1951) (concurring opinion).[48]

Meadowmoor's extremely violent facts go far beyond any version of the facts relating to the incidental presence of some physical violence in this case. In cases of lesser violence than *Meadowmoor*, this Court has not again applied its holding to enjoin protected First Amendment activity or even activity that is merely not unlawful. In *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 139 (1957), faced with a mixture of violence and protected activity somewhat below that in *Meadowmoor*, the Court reversed an injunction "insofar as it enjoined peaceful picketing," distinguishing *Meadowmoor*. In *Teamsters Local 795 v. Newell*, 356 U.S. 341 (1958), *rev'g* 181 Kan. 898, 317 P.2d 817 (1957), the Court summarily reversed for overbreadth a state court decision relying on *Meadowmoor* because of "unlawful intimidation and threats." The Court again refused to apply *Meadowmoor* in *Carroll v. President & Commissioners of Princess Anne*, 393 U.S. 175, 180, 183 (1968). It pointedly observed: "An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by the constitutional mandate and the essential needs of the public order."

Meadowmoor does not govern this case.

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[48] In any event, there is a serious constitutional question whether *Meadowmoor*, a picketing case decided in the context of pervasively violent labor union activity, can be applied to political boycotts. The First Amendment's guarantees are broader for purposes of political activity than for purposes of labor union activity. *See Abood v. Detroit Bd. of Education*, 431 U.S. 209 (1977). The Court has explicitly distinguished labor picketing from public protests concerning the desegregation of local schools, observing that the latter "res[t] on the highest rung of the hierarchy of First Amendment values." *Carey v. Brown*, 447 U.S. 455, 466-67 (1980). Here, too, Petitioners' communicative activity has been directed at civil and political reforms, not labor or other economic issues. If *Meadowmoor* has any vitality at all, it is only in the narrow field of industrial strife.

CONCLUSION

For the reasons stated above, the judgment holding the entire boycott unlawful, assessing damage liability for all business losses incurred by Respondents against all the Petitioner participants and enjoining their future peaceful boycott activities, should be reversed in its entirety.

Respectfully submitted,

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December 24, 1981

APPENDIX

LIBRARY OF CONGRESS

JOURNALS OF THE CONTINENTAL CONGRESS

1774 - 1789

EDITED FROM THE ORIGINAL RECORDS IN THE LIBRARY OF CONGRESS BY WORTHINGTON CHAUNCEY FORD
CHIEF, DIVISION OF MANUSCRIPTS

Volume I. 1774

WASHINGTON
GOVERNMENT PRINTING OFFICE
1904

* * * * * *

THURSDAY, OCTOBER 20, 1774.

The Congress met.

The association being copied, was read and signed at the table, and is as follows:—

Here insert the Association.

WE, his majesty's most loyal subjects, the delegates of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, the three lower counties of New-Castle, Kent and Sussex, on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, deputed to represent them in a continental Congress, held in the city of Philadelphia, on the 5th day of September, 1774, avowing our allegiance to his majesty, our affection and regard for our fellow-subjects in Great-Britain and elsewhere, affected with the deepest anxiety, and most alarming apprehensions, at those grievances and distresses, with which his Majesty's American subjects are oppressed; and having taken under our most serious deliberation, the state of the whole continent, find, that the present unhappy situation of our affairs is occasioned by a ruinous system of colony administration, adopted by the British ministry about the year 1763, evidently calculated for inslaving these colonies, and, with them, the British empire. In prosecution of which system, various acts of parliament have been passed, for raising a revenue in America, for depriving the American subjects, in many instances, of the constitutional trial by jury, exposing their lives to danger, by directing a new and illegal trial beyond the seas, for crimes alleged to have been committed in America: and in prosecution of the same system, several late, cruel, and oppressive acts have been passed, respecting the town of Boston and the Massachusetts-Bay, and also an act for extending the province of Quebec, so as to border on the western frontiers of these colonies, establishing

an arbitrary government therein, and discouraging the settlement of British subjects in that wide extended country; thus, by the influence of civil principles and ancient prejudices, to dispose the inhabitants to act with hostility against the free Protestant colonies, whenever a wicked ministry shall chuse so to direct them.

To obtain redress of these grievances, which threaten destruction to the lives, liberty, and property of his majesty's subjects, in North America, we are of opinion, that a non-importation, non-consumption, and non-exportation agreement, faithfully adhered to, will prove the most speedy, effectual, and peaceable measure: and, therefore, we do, for ourselves, and the inhabitants of the several colonies, whom we represent, firmly agree and associate, under the sacred ties of virtue, honour and love of our country, as follows:

1. That from and after the first day of December next, we will not import, into British America, from Great-Britain or Ireland, any goods, wares, or merchandise whatsoever, or from any other place, any such goods, wares, or merchandise, as shall have been exported from Great-Britain or Ireland; nor will we, after that day, import any East-India tea from any part of the world; nor any molasses, syrups, paneles,[1] coffee, or pimento, from the British plantations or from Dominica; nor wines from Madeira, or the Western Islands; nor foreign indigo.

2. We will neither import nor purchase, any slave imported after the first day of December next;[2] after which time, we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it.

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[1] Brown unpurified sugar.

[2] In the pamphlet edition this sentence reads: "That we will neither import, nor purchase any slave imported, after the first day of December next."

3. As a non-consumption agreement, strictly adhered to, will be an effectual security for the observation of the non-importation, we, as above, solemnly agree and associate, that, from this day, we will not purchase or use any tea, imported on account of the East-India company, or any on which a duty hath been or shall be paid; and from and after the first day of March next, we will not purchase or use any East-India tea whatever; nor will we, nor shall any person for or under us, purchase or use any of those goods, wares, or merchandise, we have agreed not to import, which we shall know, or have cause to suspect, were imported after the first day of December, except such as come under the rules and directions of the tenth article hereafter mentioned.

4. The earnest desire we have, not to injure our fellow-subjects in Great-Britain, Ireland, or the West-Indies, induces us to suspend a non-exportation, until the tenth day of September, 1775; at which time, if the said acts and parts of acts of the British parliament herein after mentioned are not repealed, we will not, directly or indirectly, export any merchandise or commodity whatsoever to Great-Britain, Ireland, or the West-Indies, except rice to Europe.[3]

5. Such as are merchants, and use the British and Irish trade, will give orders, as soon as possible, to their factors, agents and correspondents, in Great-Britain and Ireland, not to ship any goods to them, on any pretence whatsoever, as they cannot be received in America; and if any merchant, residing in Great-Britain or Ireland, shall directly or indirectly ship any goods, wares or merchandise, for America, in order to break the said non-importation agreement, or in any manner contravene the same, on such unworthy conduct being well attested, it ought to be made public; and, on the same being so done, we will not, from thenceforth, have any commercial connexion with such merchant.

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[3] See *Journals of Congress*, 1 August, 1775, *post*.

6. That such as are owners of vessels will give positive orders to their captains, or masters, not to receive on board their vessels any goods prohibited by the said non-importation agreement, on pain of immediate dismission from their service.

7. We will use our utmost endeavours to improve the breed of sheep, and increase their number to the greatest extent; and to that end, we will kill them as seldom [1] as may be, especially those of the most profitable kind; nor will we export any to the West-Indies or elsewhere; and those of us, who are or may become overstocked with, or can conveniently spare any sheep, will dispose of them to our neighbours, especially to the poorer sort, on moderate terms.

8. We will, in our several stations, encourage frugality, economy, and industry, and promote agriculture, arts and the manufactures of this country, especially that of wool; and will discountenance and discourage every species of extravagance and dissipation, especially all horse-racing, and all kinds of gaming, cock-fighting, exhibitions of shews, plays, and other expensive diversions and entertainments; and on the death of any relation or friend, none of us, or any of our families, will go into any further mourning-dress, than a black crape or ribbon on the arm or hat, for gentlemen, and a black ribbon and necklace for ladies, and we will discontinue the giving of gloves and scarves at funerals.

9. Such as are venders of goods or merchandise will not take advantage of the scarcity of goods, that may be occasioned by this association, but will sell the same at the rates we have been respectively accustomed to do, for twelve months last past.—And if any vender of goods or merchandise shall sell any such goods on higher terms, or shall, in any manner, or by any device whatsoever violate or depart from this agreement, no person

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[1] The pamphlet says *sparingly*.

ought, nor will any of us deal with any such person, or his or her factor or agent, at any time thereafter, for any commodity whatever.

10. In case any merchant, trader, or other person,[2] shall import any goods or merchandise, after the first day of December, and before the first day of February next, the same ought forthwith, at the election of the owner, to be either re-shipped or delivered up to the committee of the county or town, wherein they shall be imported, to be stored at the risque of the importer, until the non-importation agreement shall cease, or be sold under the direction of the committee aforesaid; and in the last-mentioned case, the owner or owners of such goods shall be reimbursed out of the sales, the first cost and charges, the profit, if any, to be applied towards relieving and employing such poor inhabitants of the town of Boston, as are immediate sufferers by the Boston port-bill; and a particular account of all goods so returned, stored, or sold, to be inserted in the public papers; and if any goods or merchandises shall be imported after the said first day of February, the same ought forthwith to be sent back again, without breaking any of the packages thereof.

11. That a committee be chosen in every county, city, and town, by those who are qualified to vote for representatives in the legislature, whose business it shall be attentively to observe the conduct of all persons touching this association; and when it shall be made to appear, to the satisfaction of a majority of any such committee, that any person within the limits of their appointment has violated this association, that such majority do forthwith cause the truth of the case to be published in the gazette; to the end, that all such foes to the rights of British-America may be publicly known, and universally contemned as the enemies of American

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[2] Persons is used in the pamphlet.

liberty; and thenceforth we respectively will break off all dealings with him or her.

12. That the committee of correspondence, in the respective colonies, do frequently inspect the entries of their custom-houses, and inform each other, from time to time, of the true state thereof, and of every other material circumstance that may occur relative to this association.

13. That all manufactures of this country be sold at reasonable prices, so that no undue advantage be taken of a future scarcity of goods.

14. And we do further agree and resolve, that we will have no trade, commerce, dealings or intercourse whatsoever, with any colony or province, in North-America, which shall not accede to, or which shall hereafter violate this association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of their country.

And we do solemnly bind ourselves and our constituents, under the ties aforesaid, to adhere to this association, until such parts of the several acts of parliament passed since the close of the last war, as impose or continue duties on tea, wine, molasses, syrups, paneles, coffee, sugar, pimento, indigo, foreign paper, glass, and painters' colours, imported into America, and extend the powers of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorize the judge's certificate to indemnify the prosecutor from damages, that he might otherwise be liable to from a trial by his peers, require oppressive security from a claimant of ships or goods seized, before he shall be allowed to defend his property, are repealed.—And until that part of the act of the 12 G. 3, ch. 24, entitled "An act for the better securing his majesty's dock-yards, magazines, ships, ammunition, and stores," by which any persons charged with committing any of the offenses

therein described, in America, may be tried in any shire or county within the realm, is repealed—and until the four acts, passed the last session of parliament, viz. that for stopping the port and blocking up the harbour of Boston—that for altering the charter and government of the Massachusetts-Bay—and that which is entitled "An act for the better administration of justice, &c."—and that "for extending the limits of Quebec, &c." are repealed. And we recommend it to the provincial conventions, and to the committees in the respective colonies, to establish such farther regulations as they may think proper, for carrying into execution this association.

The foregoing association being determined upon by the Congress, was ordered to be subscribed by the several members thereof; and thereupon, we have hereunto set our respective names accordingly.

IN CONGRESS, PHILADELPHIA, *October 20, 1774.*

Signed, PEYTON RANDOLPH, *President.*

New Hampshire	Jn.º Sullivan
	Nath.el Folsom
Massachusetts Bay	Thomas Cushing
	Sam.l Adams
	John Adams
	Rob.t Treat Paine
Rhode Island	Step. Hopkins
	Sam: Ward
Connecticut	Elipht Dyer
	Roger Sherman
	Silas Deane
New York	Isaac Low
	John Alsop
	John Jay
	Ja.s Duane
	Phil. Livingston
	W.m Floyd
	Henry Wisner
	S: Bocrum
Virginia	Richard Henry Lee
	G.o Washington
	P. Henry J.r
	Richard Bland
	Benj.n Harrison
	Edm.d Pendleton
North Carolina	Will Hooper
	Joseph Hewes
	R.d Caswell
New Jersey	J. Kinsey
	Wil: Livingston
	Step.n Crane
	Rich.d Smith
	John De Hart
Pennsylvania	Jos. Galloway
	John Dickinson
	Cha Humphreys
	Thomas Mifflin
	E. Biddle
	John Morton
	Geo: Ross
The Lower Counties New Castle	Caesar Rodney
	Tho. M: Kean
	Geo: Read
Maryland	Mat Tilghman
	Th.s Johnson Jun.r
	W.m Paca
	Samuel Chase
South Carolina.	Henry Middleton
	Tho Lynch
	Christ Gadsden
	J Rutledge
	Edward Rutledge

Ordered, that this association be committed to the press, and that one hundred & twenty copies be struck off.

The Congress then resumed the consideration of the Address to the Inhabitants of these colonies, & after debate thereon, adjourned till to-morrow.

* * * * * *

FILED
FEB 19 1982
ALEXANDER L. STEVAS
CLERK

No. 81-202

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,

Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

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January 27, 1982

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Where a state court finds the "agreed use" of "force, violence and threats" in a boycott whose primary purpose is to persuade merchants to use their influence toward changing local government policies, and where the court also finds that "the volition of many . . . persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants," does the state court violate the Constitution by awarding compensatory damages to the injured merchants against those boycott organizers found to have participated or acquiesced in the force, violence and threats?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-202

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

This was not a peaceful and voluntary boycott.

The courts below found that physical force and violence, in which all of the petitioners participated or acquiesced, was central to the success of the boycott. This illegal force was conducted against black people in Claiborne County who did not agree with the boycott and would not otherwise have observed it. Much of the violence was committed by members of a paramilitary organization known as the "Deacons" or the "Black Hats," who wore uniforms, carried weapons, drilled in close formation, and served as "store watchers." The store watchers sometimes stopped black people from entering stores, and at other times took their names. The names were read at weekly mass meetings. Many of those who were denounced at the meetings were subsequently the victims

of violence, including beatings, shooting into houses, and the destruction of automobiles and other property.

The state courts found that Charles Evers, the paid full-time Field Secretary of the National NAACP who was the national organization's principal spokesman and organizer in Mississippi, was the prime mover in the boycott and in the illegal coercive tactics. Evers personally threatened boycott breakers with violence, including death, on a number of occasions. He designated the "Black Hats" as his "enforcers." Evers continued to threaten people with violent retribution even after a number of boycott breakers had already been the victims of violence. He was not joking or engaging in harmless hyberbole. The black people of Port Gibson believed him. Evers often stated his belief that "each race has a right to its own discipline." He regarded recalcitrant blacks as his "children" whom it was his right to discipline:

> See, people don't always obey because they want to. They usually obey because they have to.

Mississippi Action for Progress, which managed the federal Head Start program in Claiborne Couty and whose goals and outlooks are quite similar to those most often expressed by the national NAACP, stated in its brief in the state court that

> violence to those who broke the boycott continued to be a way of life in Port Gibson and Claiborne County.

Petitioners simply do not accept the facts as found by the state courts. Their arguments about First Amendment protection of "peaceful, voluntary" boycotts are irrelevant to this case. Many of their legal arguments therefore amount to pleas for a trial de novo in the United States Supreme Court. Many of these arguments invite the Court to fashion a different law for these petitioners than for others who employ similar tactics with similar results. Such an outcome could be effected by the employment of a "level of scrutiny" that denies the state

court resolutions of disputed fact questions the respect they are due and imposes an insuperable burden of proof on those who have been injured by the petitioners' constitutionally unprotected activities.

The record reflects that the Port Gibson boycott was a nasty business. The state court decision was just. The invocation of the term "civil rights boycott" does not change the facts, and it should not be allowed to change the law.

ARGUMENT

I. THE PETITIONERS' CASE RESTS ENTIRELY ON THEIR CONTENTION THAT THE TRIAL JUDGE MADE INCORRECT FINDINGS OF FACT.

Petitioners' brief on the merits urges this Court to accord broad First Amendment protection to "peaceful activities to support and enforce civil rights boycotts." In section IV, *infra*, we question the constitutional basis for a distinction between "civil rights boycotts" and other boycotts, and suggest that the broad view of First Amendment protection urged by petitioners conflicts with this Court's holdings that there is no absolute constitutional protection for peaceful and voluntary secondary boycotts aimed at securing better wages and working conditions. The principal dispute between petitioners and respondents, however, is not on the law but on the facts.

The petitioners' assertion that "the Claiborne County boycott was a peaceful and voluntary boycott" which happened unfortunately to coincide with certain "sporadic incidents of violence" that "appear to be nothing more than random entries in the Claiborne County police blotter" could not be further from the facts found by the trial judge:

> The "store watchers" or "enforcers" on occasion physically stopped and blocked black customers and instructed them not to trade with white merchants. Some blacks were physically assaulted for continuing to trade with white merchants after being warned. Personal property purchased in white-owned stores by blacks was taken from them and destroyed. On at

> least two occasions gunshots were fired into the houses of black people who continued to trade with white-owned business establishments. . . . The thread of fear and violence is woven throughout this case.
>
> Chancery Court Opinion at 19b, 34b.[1]

Charles Evers, who served as Field Secretary of the NAACP, was the principal organizer of the Port Gibson boycott. The very candid account of the boycott in his autobiography, *Evers*, is more consistent with the record and the findings of the courts below than with the statement of facts in petitioners' brief:

> Nothing wrong with disciplining your own family. I'm not saying we beat anybody up. We took care of them in a way they understood. People would catch them coming out of an uncooperative store and take their bags away from them, destroy the bags, while they were paying to keep us in slavery, or a motor might lock on a car. There might be a bit of sugar in the gas tank. There occasionally may be somebody—I didn't do it—but somebody would send a brickbat through a window around midnight with a telegram saying, 'You shopped at such and such a place.' See, people don't always obey because they want to. They usually obey because they have to.

Evers 8-9 (World Publishing Co. 1971) (quoted at App. 201).[2]

We believe that unless this Court substitutes the petitioners' findings of fact for those of the trial court, it will not reach the questions of constitutional law that would be presented by an award of damages to merchants injured by the sort of boycott described in the petitioners' brief. We therefore devote a major part of our argugument, sections II and III *infra*, to discussing the proper standard of review and the support in the record for the trial court's conclusion that this was *not* a "peaceful and

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[1] Citations to the opinions of the courts below are to the Appendices to the Petition for Certiorari.

[2] Wherever possible, citations to the record are to the appropriate pages in the Joint Appendix ("App.").

voluntary" boycott. The remainder of this section deals with the question presented on the facts found by the courts below:

> Where a state court finds that physical violence, explicit verbal threats of violence, and threatening conduct including the presence of armed guards outside the doors of business establishments contribute substantially to the success of a boycott, is it unconstitutional for a state court to award compensatory damages to the merchants against those boycott organizers who participated in, authorized or ratified these threats and violence?

This question answers itself even more readily than the questions of law that the petitioners believe to be presented in this case, and it is a far more accurate restatement of the actual holdings in the courts below.

a) Violence, threats of violence, and threatening conduct are not constitutionally protected forms of expression.

Anything, including killing, can be a form of expression. Threatening to break someone's neck if he betrays a cause is both "political expression" and "pure speech," but it is not protected by the First Amendment. That some of the framers of the Constitution were willing to countenance threats and even violence against those who traded with their British enemies in the months immediately preceding the American Revolution cannot be taken as evidence of an intention not to punish similar conduct after the establishment of an American republic, much less to prohibit the state governments from doing so as a matter of constitutional law.

This Court has long recognized that the First Amendment does not protect all expression or even all speech. "[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken or printed." Giboney v. Empire Storage and Ice Co., 336 U.S. 490, 502 (1949) (per Black, J.). A threat

to inflict physical violence is perhaps the most obvious example of speech that will not ordinarily be protected. Justice Holmes's statement that "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic" was coupled with the observation that this same "stringent protection" gave nobody the right to "utte[r] words that may have all the effect of force." Schenck v. United States, 249 U.S. 47, 52 (1919). Thus a criminal statute punishing threats on the life of the President of the United States is "[c]ertainly . . . constitutional on its face." Watts v. United States, 394 U.S. 705, 707 (1969). In Federal Communications Commission v. Pacifica Corporation, 438 U.S. 726 (1978), the Court cited the above-quoted passage from *Schenck* as illustrative of a distinction between offensive opinions and offensive modes of expression:

> [T]he fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection. For it is a central tenet of the First Amendment that the government remain neutral in the marketplace of ideas. . . . But . . . [t]hese words offend for the same reason that obscenity offends. Their place in the hierarchy of First Amendment values was aptly sketched by Mr. Justice Murphy when he said: '[S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.' Chaplinsky v. New Hampshire, 315 U.S. 568, 572. . . .
>
> *Id.* at 745-46 (per Stevens, J.) (footnote omitted).

Pacifica involved obscene language and *Chaplinsky* involved "fighting words," whose only link to violence is that they might incite the hearer to attack the speaker. Threats of violence, like these other offensive modes of

speech, might be used to express opinions, including political opinions, and are therefore not always outside the scope of the First Amendment. But a threat to break somebody's neck or shoot into his house if he refuses to join a political movement, even if it expresses the speaker's opinion of the value of the movement and perhaps also of the person threatened, does more: It constitutes an attempt to obtain the listener's compliance whether or not he is persuaded of the merits of the argument. Affording constitutional protection to threats would chill and circumscribe the victim's exercise of his own freedom of expression and association; as Mr. Evers put it, he will obey not because he wants to but because he has to. Far more clearly than in the cases of obscenity and "fighting words," society's decision to punish those who threaten violence is a decision that enhances freedom.

Society's right to punish threatening conduct is at least as clearly established as its right to punish verbal threats. Significantly, many of this Court's decisions recognizing this right have had to do with picketing. In Hughes v. Superior Court of California, 339 U.S. 460 (1950), Justice Frankfurter observed that

> while picketing is a mode of communication it is inseparably something more and different. . . . Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication . . . . It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent.
>
> *Id.* at 464-6.

Justice Douglas, concurring in Bakery & Pastry D&H Local v. Wohl, 315 U.S. 769 (1942), observed that "the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the

ideas being disseminated." *Id.* at 775-76. In Cox v. Louisiana, 379 U.S. 559 (1965), the Court held that picketing "is subject to regulation even though intertwined with expression and association." *Id.* at 563. Citing *Schenck*, *Chaplinsky*, *Hughes* and *Giboney* among other cases, Justice Brennan distinguished between picketing and "such a pure form of expression as newspaper comment or a telegram by a citizen to a public official." 379 U.S. at 564. And in National Labor Relations Board v. Retail Store Employees Union, 447 U.S. 607 (1980), the Court rejected a First Amendment challenge to a statutory prohibition of *peaceful* picketing incident to a secondary boycott. Justice Stevens, concurring, noted that

> picketing is a mixture of conduct and communication. In the labor context, it is the conduct element rather than the particular idea being expressed that often provides the most persuasive deterrent to third persons about to enter a business establishment. . . . Indeed, no doubt the principal reason why handbills containing the same message are so much less effective than picketing is that the former depend entirely on the persuasive force of the idea. The statutory ban in this case affects only that aspect of the union's effort to communicate its views that calls for an automatic response to a signal, rather than a reasoned response to an idea.

Id. at 619 (Stevens, J., concurring).

This Court has recognized that where picketing had been part of a course of conduct in which violence has also played an important role, the picketing itself may operate as a threat of further violence. In Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1942), Justice Frankfurter observed that "utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution." *Id.* at 293.

Our case does not rest on the vitality of the holding in *Meadowmoor*. Like most of the cases in which this Court has had occasion to distinguish picketing inter-

twined with violence from pure expression of opinion, *Meadowmoor* involved a prior restraint of peaceful picketing. In section V, *infra*, we argue that the injunction issued but never enforced in this case is not an issue before this Court. In any case, a state court judgment granting compensatory damages in a civil case for actual economic losses does not pose the same threat to First Amendment values as a prior restraint or as a criminal conviction, and the question of civil liability in this case should be judged accordingly. Finally, none of the defendants was held liable solely because he participated in peaceful picketing activities, so the Court need not consider the extent to which such activities alone might constitute actionable conduct. The peaceful picketing cases have been discussed merely to illustrate the gap between the First Amendment as it is construed by the petitioners and as it has been construed by this Court.

In this case the stores were guarded by "enforcers," in some instances with guns. *See* App. 52-54, 129-30, 133-34, 150, 289. The trial court found as a fact that the store-watching activity in this case was intended not primarily to express an opinion but to overcome the volition of potenial customers, and that it had its desired effect. Chancery Court Opinion at 17b-18b, 39b. The guns and uniforms, the physical blocking of black people on their way into white stores, the taking of the names of boycott violators and subsequent publication of these names in newspapers and public meetings, and the frequent threats of physical violence that characterized the store-watching were more than sufficient evidence to support the trial court's finding, particularly since all concerned knew of the shootings and beatings and other disciplinary acts that had been imposed on boycott breakers. Even on particular days when store-watchers did not engage in violence or in verbal threats, their conduct had, in Justice Frankfurter's words, "los[t] its significance as an appeal to reason and become part of an in-

strument of force." 312 U.S. at 293. This conduct was not protected by the First Amendment.

Since the petitioners' brief is premised on a different view of the facts, it is hard to know to what extent they would take issue with our view of the law. On page 30 of petitioners' brief, however, there is the suggestion that incidents in which "no act of physical violence is described" are among incidents that "lack any significance." And on page 32 the petitioners suggest that Charles Evers's statement that "if we catch you going in any of them racist stores we're gonna break your damn neck" constitutes "highly charged political rhetoric about emotional political issues" that "does not lose its First Amendment protection." For this proposition the petitioners cite *Watts v. United States, supra.* We disagree. The Court in *Watts* found that there was no threat because no reasonable person would have felt threatened. Had the President known of the threat, he would have agreed with the Court that the statement "could [not] have been interpreted otherwise" than as "a kind of very crude offensive method of stating a political opposition to the President." 394 U.S. at 708. Indeed, the threat was "expressly made conditional upon an event—induction into the armed forces—which petitioner vowed would never occur." *Id.* at 707.

The *Watts* case, concerning a conditional threat to perform a highly improbable action, is analogous to Tuberville v. Savage, 86 Eng. Rep. 684 (1669), wherein the defendant was held not to be liable for assault for a statement that "if it were not assize time, I would not take such language from you." Prosser sharply distinguishes such cases, involving a condition contrary to fact, from threats like those made by Evers and other defendants during the course of the boycott:

> [T]he defendant is not free to compel the plaintiff to buy his safety by compliance with a condition which there is no legal right to impose. 'Your money

> or your life,' whether or not it does anything to allay the anxiety of the plaintiff, is an obvious invasion of his rights, and will not prevent an actionable assault.
>
> Prosser on Torts 40 (4th ed. 1971) (footnotes omitted).

Either the petitioners are urging this Court to work a constitutional revolution not only on the common law of civil conspiracy but also on the common law of assault and of extortion, or they simply disagree with the trial court finding that when "physical harm" was "promised" by Evers "on at least two occasions," it was "apparent that the black people believed him." Chancery Court Opinion at 37b-38b. The court further found that Evers had designated as his "enforcers" a paramilitary organization that was "a cause of pervasive fear among black citizens of Claiborne County" and that "the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants." *Id.* at 17b-18b, 39b. By the time of the 1969 speech, Evers, other boycott leaders and members of the Black Hats had warned black citizens many times that they had "better not" patronize the merchants, that they would be "taken care of" if they did, that it was "no use to go calling the sheriff, he can't help you, he can't sleep with you at night." Boycott breakers had been injured in their persons and their property on many more than the three occasions acknowledged by petitioners.

To those black citizens of Claiborne County who chose not to regard themselves as Charles Evers's "children" subject to his "discipline," the threats of physical violence were not a joke and they were not harmless political hyperbole. It was not assize time in Port Gibson. The threats were not protected speech.

b) If the trial court was correct in finding that the boycott was violent and coercive rather than peaceful and voluntary, the Mississippi courts were not constitutionally prohibited from assessing civil damages against those boycott organizers who condoned or acquiesced in the violence and coercion.

The trial court found that "certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers." Chancery Court Opinion at 39b. One defendant was found only to have participated in a peaceful march, and the complaint against him was dismissed. *Id.* at 28b. The Mississippi Supreme Court reversed the judgment against 39 other defendants on the ground that there was insufficient evidence in the record to prove their participation in the conspiracy. Mississippi Supreme Court Opinion at 26a. The Supreme Court clearly indicated its reason for upholding the trial court judgment against the other defendants: whether the boycott was "primary, secondary, economical, political, social or other," civil liability could be sustained because of "[*t*]*he agreed use of illegal force, violence and threats.*" *Id.* at 23a (emphasis added).

Whatever constitutional problems might be raised by the broadest possible application of the common law of civil conspiracy to an agreement to work in concert to achieve political goals, those problems are not presented on the facts as found by the trial court. A civil conspiracy is an agreement to pursue illegal ends or to pursue legal ends by illegal means, and the Mississippi Supreme Court found that this conspiracy was of the latter kind. *Id.* at 23a. But this is not a case in which parties to an otherwise legal agreement are held liable for illegal conduct of which they did not know or which they did their best to stop. The award of damages was based solely on the *agreed* use of illegal force, violence and threats. *Id.* at 23a. The evidence in the record to

support the findings of the courts below is discussed in section III, *infra*.

Amici American Civil Liberties Union and National Organization for Women urge the Court to use this case as a vehicle for unconstitutionalizing the common law of civil conspiracy on the ground that the Restatement of Torts provides a more enlightened rule. Brief Amici Curiae of the American Civil Liberties Union and the National Organization for Women at 22. It is worth noting that under the rule suggested by these amici, Restatement of Torts 2d, Section 876, a defendant may be held liable for harm caused by another person if he "gives substantial assistance or encouragement to the other" to conduct himself in a manner the defendant knows to be tortious. Even under this standard the Court should uphold the judgment against the petitioners, provided only that the lower courts were correct in their findings of fact and that the word "substantial" is not a code word for the imposition of a Draconian burden of proof on those who have been injured by tortious conduct. Most conspiracies consist of some participants who do the dirty work and others who give the orders. The leaders seldom publicize their endorsement of the illegal conduct—Charles Evers's speeches and autobiography are rare exceptions to this rule, and even under the ACLU standard he should be held liable for having "substantially encouraged" the violent acts of others, as well as for the effects of his own threats of violence—and it is usually necessary for the trial judge to infer endorsement of illegal activity from conduct and context.

We discuss in section II, *infra*, the appropriate standard of Supreme Court review of the trial court's conclusions in this case. We urge this Court to recognize, as the ACLU does not seem to recognize, that those who are injured by politically motivated violence and threats also have interests that are often of constitutional stature and that are always legitimate objects of state protection. In this case the interests of the victims happen to be the very interests—freedom of expression, of

association, and of choice in pursuing economic and political goals—that are asserted by those who were found to have injured them. *See, e.g.*, App. 332-33, 401-02. In allowing the trial court to draw the most likely conclusions from the preponderance of the evidence, society has struck an even balance between alleged victims and alleged tortfeasors. In a civil case involving threats and violence, the First Amendment no more requires a restriking of that balance one way than the other.

The petitioners raise a closely related issue when they claim that as a matter of constitutional law "an individual associating with others to advance personal beliefs and ideas is not responsible for another's illegal acts absent a highly particularized showing of responsibility." The cases cited for this proposition are inapposite: Noto v. United States, 367 U.S. 290 (1961) was a reversal of a federal criminal conviction based on construction of the Smith Act. Elfbrandt v. Russell, 384 U.S. 11 (1966), held overbroad a state loyalty oath statute imposing criminal penalties for subsequent affiliation with an organization having as one of its purposes the overthrow of the government of Arizona. The plaintiff did not have "any chance to get a hearing at which its precise scope and meaning could be determined," *id.* at 13, and the Court feared that teachers would not know whether they could join international scientific organizations and seminar groups. Healy v. James, 408 U.S. 169 (1972) held that where a group of students had "proclaim[ed] their complete independence" from the national SDS, the student group could not be banned from a state college campus solely because of the national organization's philosophy. United States v. Spock, 416 F.2d 165 (1st Cir. 1969) was a federal criminal case. None of these cases suggests that a state court violates the Constitution by awarding damages in a civil case for losses that actually occurred as a result of conduct not protected by the First Amendment on a finding of general intent to further the illegal conduct rather than specific criminal intent.

In Ramsey v. United Mine Workers, 401 U.S. 302 (1971), this Court reversed lower court holdings that a "clear proof" standard was required as a basis for imposing statutory treble damages against a labor union found to have engaged in an "implied conspiracy" manifested by peaceful picketing and other organizational and strike activity. The Court stated that the courts below had erred in applying this "new and different standard of proof" rather than the traditional preponderance of the evidence test "in deciding factual issues concerning the commission vel non of acts by union officers or by members alleged to constitute a conspiracy, or the inferences to be drawn from such acts, or concerning overt acts in furtherance of the conspiracy, the impact on the relevant market or the injury to plaintiffs' businesses." *Id.* at 309 (per White, J.).

Although *Ramsey* was a case of statutory construction, the Court could not have applied an unconstitutional standard of proof. The facts and the legal issues in this case resemble *Ramsey* much more closely than any of the "subversive philosophies" cases cited by petitioners. This Court has not seen fit to constitutionalize the burden of proof in cases punishing modes of expression and association that violate the federal labor laws. Nor should it unconstitutionalize the traditional rules of evidence and procedure in analogous cases in the state courts.

The Port Gibson boycott was not a national movement some of whose goals and actions may have been unknown to some of its members. The injuries it caused were not hypothetical future ones. Everybody knew that "violence to those who broke the boycott continued to be a way of life." Brief of Mississippi Action for Progress in Mississippi Supreme Court at 21. Yet the Black Hats stayed on the streets taking the names of boycott breakers to be denounced at mass meetings, and boycott participants still applauded when Charles Evers promised to "take care of" and to "discipline" uncooperative blacks. App. 91-92. The courts below dismissed forty of the original defendants because there was insufficient evidence that

they had "agreed" to the force, violence and threats. We discuss in section III, *infra*, the evidence supporting the state courts' finding that the remaining defendants did so agree. In inferring the agreement of some of the petitioners from their conduct, and in requiring only general intent as a basis for civil liability, the courts below did not violate the First Amendment.

Petitioners also attack the measure of damages announced by the Mississippi Supreme Court in its instructions to the trial court on remand, citing United Mine Workers v. Gibbs, 383 U.S. 715 (1966), for the proposition that, as a matter of constitutional law, "the permissible scope of state remedies in this area is strictly confined to the direct consequences of such conduct, and does not include consequences resulting from associated peaceful picketing." *Id.* at 729. *Gibbs*, however, involved construction of the same section of the Norris-LaGuardia Act that was presented in *Ramsey, supra.* The Court in *Gibbs* purported to speak only of federal preemption and not of the requirements of the First Amendment, and the Court's later decision in *Ramsey* surely dispels any notion that the First Amendment requires in all cases the "new and different" limitations on recovery that the labor laws impose in a few cases.

Yet another distinction can be made between this case and *Gibbs*. In that case there were two distinct episodes, the first violent and illegal, the second peaceful and protected by the labor laws. Indeed, the record reflected that union officials had suppressed the violence immediately upon learning of it. 383 U.S. at 740. In Mead v. Retail Clerks International Association, 523 F.2d 1371 (9th Cir. 1975), the court pointed out that *Gibbs* applied only to a situation "where a union has engaged in both lawful and unlawful conduct, and the consequences of those actions are seperable." 523 F.2d at 1378. In cases where the consequences of legal and illegal conduct are not separable, "[t]he requirement that the unlawful objective must have 'materially contributed' to the loss or have been a 'substantial factor' in bringing it about, will prevent windfall recoveries . . . ." *Id.* at 1379. And the Court in *Gibbs* distinguished

Meadowmoor, supra, on the ground that where picketing was set in a background of violence, the record "might support the conclusion that all damages resulting from the picketing were proximately caused by its violent component or by the fear which that violence engendered." 383 U.S. at 731-32.

The liability imposed in this case was for conduct that is not protected by the First Amendment. Contrary to the assertions in petitioners' brief at pages 39-41, the trial court and the Mississippi Supreme Court found violence and threats to have been a substantial and material factor in the success of the boycott and the consequent injuries to the plaintiffs. Chancery Court Opinion at 18b-19b, 35b, 39b; Mississippi Supreme Court Opinion at 20a, 24a. A state court is not constitutionally required to limit the penalties it imposes for unprotected conduct to the actual amount of the damage thereby occasioned. In *Ramsey*, for instance, this Court imposed a statutory penalty of three times the actual amount of damages occasioned by the peaceful but unprotected expression and association in which the defendants had engaged. Moreover, in this case there was only one boycott, and it was substantially and materially violent and coercive. Even if the state courts would have been under an obligation to apportion severable items of damages attributable to protected and unprotected conduct respectively, they were under no obligation to indulge in hypotheticals contrary to fact. The petitioners chose to use coercion as well as persuasion to inflict the desired economic damage on the merchants, and they cannot be heard to complain that they might have succeeded almost as well if they had eschewed coercion.

c) The NAACP is directly liable for the acts of its Field Secretary.

Petitioners and amici devote major portions of their briefs to attacking the constitutionality of the common law of conspiracy, on the apparent assumption that most petitioners, and especially the NAACP, cannot be held liable except on a conspiracy theory. It is a curious assumption.

Even if this Court were to hold that the First Amendment shields all petitioners who did not personally commit any of the threatening or violent acts that were found to have injured the respondents, the judgment of the courts below against the NAACP should be affirmed. The case against the NAACP does not rest on the law of conspiracy but on the most basic principles of the law of corporations and of agency.

Charles Evers was the principal organizer of the boycott, and he personally threatened those who broke the boycott with physical violence on a number of occasions spanning at least three years. His designation of the paramilitary Black Hats as "my enforcers," his frequent promises to "take care of," to "discipline" and to "chastise" boycott breakers, his warnings not to call the police because "they ain't going to sleep with you" at night, and his two threats to "break the necks" of those who patronized the white merchants, comprise a course of action that is consistent with the philosophy of "racial discipline" revealed in his autobiography. Violence against whites was counterproductive, but blacks were his "children" whom it was his right to discipline. "See, people don't always obey because they want to. They usually obey because they have to." App. 201.

For a fuller account of Evers's illegal and constitutionally unprotected activities in connection with the boycott, see section III, *infra*, at 34-36.

To the exact extent that Evers was liable for the effects of his threats and threatening conduct and for the violent acts of his "enforcers," the NAACP is liable. This liability is "vicarious" only in the sense that all corporate liability is vicarious: a corporation can act *only* through its agents, and Charles Evers was unquestionably the principal agent of the NAACP in the State of Mississippi during the period of the boycott. From 1963 to 1969 he served as full-time paid Field Secretary for the national organization, one of ten such employees in the nation. He was the principal spokesman for the national NAACP in Mississippi. The

boycott was within the scope of his authority, and even though the individual members and directors of the national organization might not have approved of his conduct, a corporation is responsible for the wrongful acts of its agent when they are directly related to the performance of his duties. Corporations are deemed to have "authorized" even criminal acts performed by their agents when the acts relate directly to the performance of the agents' duties. New York Central & Hudson River RR v. United States, 212 U.S. 481 (1909); Lake Shore & M.S.R. Co. v. Prentice, 147 U.S. 101 (1892); Paul F. Newton & Co. v. Texas Commerce Bank, 630 F.2d 1111 (5th Cir. 1980). When an employee is performing tasks that are of the same general class as those he is authorized to perform for his employer, the wrongful way in which he performs those tasks will not of itself take him out of the course and scope of his employment; indeed, when the wrongful act is within this general class not even his employer's specific admonition against the wrongful act will relieve the employer of liability. Pierson v. United States, 527 F.2d 459 (9th Cir. 1975); Williams v. United States, 352 F.2d 477 (5th Cir. 1965).

We urge this court to reject any suggestion that the principles of respondeat superior do not apply in this case because the NAACP is not a "commercial" organization. These rules did not evolve in order to punish greedy capitalists, but in order to redress injuries in cases where the corporate agent cannot personally compensate the injured parties for the damage he did in his wrongful pursuit of corporate goals. In this case the NAACP hired Evers as its organizer and spokesman in Mississippi. He used its name, its prestige and its resources in his illegal and constitutionally unprotected course of conduct, and his NAACP credentials were a factor in his success in getting others to join him. It is not unfair, much less unconstitutional, for the state courts to hold the NAACP responsible for investigating Evers's character and background and for exercising appropriate control over him thereafter.

Although it is not necessary that the directors of a corporation have actual knowledge of their agent's wrongdoing in order to be held responsible for its effects, there is evidence in this case that officers of the national NAACP did know and disapprove of Evers's conduct of the boycott. He testified that National NAACP officials had expressed displeasure with his activity in a prior boycott, that they had threatened to fire him but had backed off when he called their bluff. App. 213. During the Port Gibson boycott he was summoned to a meeting in Birmingham "and they were really going to fire me then," but "I carried two busloads of Mississippians over there to Birmingham, and we just stood pat and we told them in no uncertain terms, 'If you fire him, take the whole NAACP out of Mississippi.' And they didn't do it then. They backed off then." App. 214. The Director of Branches and Field Administration of the National NAACP confirmed that Evers's relationship with the national office "was always one of interest and uniqueness. . . . He didn't dot 'I's', and cross 'T's'. . . . But he got a job done." App. 456-57.

The National NAACP's structure for conducting its operations in Mississippi during the boycott period would make it particularly unjust for this Court to grant a special exception to the rules of respondeat superior. The raising and spending of money was primarily a function of the national organization, which sent money to the state organization and the local branches as it was needed. App. 443-46. The national organization paid Evers's salary as well as the general expenses of operations in Mississippi. App. 444, 468. The national NAACP retained an attorney in Mississippi who decided for himself what legal assistance to provide in connection with NAACP activities in the state. App. 448. While the national organization's official position was that its chapters should not engage in illegal activities, the Mississippi state organization, local branches and Evers himself continued to receive financial support from the national organization even when they were in contravention of official policies. App. 440-43, 451-55. Local branches were discouraged

from purchasing or holding property in their own names. App. 449. This structure provided component parts of the national organization the necessary funds to conduct their operations while allowing them to remain judgment-proof.

This Court has refused to overturn a state court finding that the NAACP was liable for the acts of its agents in a case where the facts were far weaker than in this case. In NAACP v. Overstreet, 384 U.S. 118 (1966), the Court dismissed as improvidently granted a writ of certiorari to review a state court judgment against the NAACP for damages to compensate a merchant who had been the object of a boycott wherein the sidewalk had been blocked and the merchant's customers threatened. The evidence of violence was not nearly so great as in this case, and the agent of the NAACP who organized the boycott was a local branch official rather than one of the ten paid national NAACP Field Secretaries. 384 U.S. 118 (1966) (Douglas, J., dissenting from dismissal).

Although the liability of the NAACP does not depend solely on the acts of Charles Evers, his consistent pattern of threats and threatening conduct during the course of the boycott was among the most prominent and best documented examples of boycott activity that was not protected by the First Amendment. This activity was directly related to his duties as Field Secretary, and the NAACP is accordingly liable with or without the law of conspiracy.

II. THIS COURT SHOULD RESPECT THE STATE COURTS' FINDINGS OF FACT UNLESS THERE IS NO EVIDENCE TO SUPPORT THEM.

All of the arguments in the petitioners' brief are premised upon a set of facts that is at marked variance with the facts found by the trial court and by the Mississippi Supreme Court.[3] Moreover, many of the petitioners' argu-

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[3] *See, e.g.*, Brief for Petitioners at 27 ("[T]he record does not support any finding that fear of any type of conduct by other boycott participants was important to the boycott's success."), 28

ments on questions of law amount to different ways of suggesting that this case requires a standard of review so exacting as to effect a trial *de novo* in the United States Supreme Court, in which the petitioners' version of the facts would be accorded at least the same dignity as the findings of the courts below. See section I(b), *supra*, at 11-17.

Review of the evidence and substitution of the Court's own conclusions on matters of fact for those of the courts below is not one of the purposes of certiorari jurisdiction. United States v. Johnston, 268 U.S. 220 (1925). Even where questions of constitutional law turn on the resolution of disputes concerning the facts, this Court will defer to trial court findings unless there is no evidence in the record to support these findings. Lyons v. Oklahoma, 322 U.S. 596 (1944); Gallegos v. Nebraska, 342 U.S. 55 (1951). When a case comes to this Court from a state supreme court deference is supported not only by concern for judicial efficiency and recognition of the trial court's advantages in the evaluation of testimony, but also by "due regard to federal-state relations." Culombe v. Connecticut, 367 U.S. 568, 605 (1961) (opinion of Frankfurter, J.).

This litigation presents a particularly strong case for deference to trial court findings. There is a 16,000 page

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("[T]he record establishes with remarkable clarity the general *absence* of fear in the community."), 32 n.34 (suggesting that Charles Evers threatened only once that the necks of boycott breakers would be broken), 33 (twelve "random entries in the Claiborne County police blotter . . . constitute the sole 'thread' by which the chancellor and the Mississippi Supreme Court tied allegedly unlawful activity to the Claiborne County boycott), 34-35 (some petitioners did nothing but march or disseminate leaflets), 36 ("there was no evidence that Petitioner NAACP ever organized, sponsored, or condoned violence or threats of violence"), 41 ("It is undisputed" that the boycott "consisted primarily of constitutionally protected" activities.). *But see* Chancery Court Opinion at 17b-18b, 19b, 20b, 34b-38b, 39b, 51b-52b; Mississippi Supreme Court Opinion at 14a-21a, 23a, 24a, 26a; section III, *infra*, at 29-41.

record. There were over 100 witnesses, whose credibility must supply the answers to many hotly disputed questions of fact. There are matters—such as what some of the petitioners meant when they said they would break people's necks, burn their houses, "whip" them, "discipline" them and otherwise "take care of" them, and whether their listeners were afraid—in which nuance and context are crucial, and on which reading the printed record cannot begin to supply the advantages of observing live witnesses.

Many of the fact findings with which the petitioners take issue are conclusions not about raw evidentiary facts but about the ultimate facts at issue in this litigation. This does not detract from their character as findings of fact. Although it is entirely appropriate that this Court conduct its own examination of the record to determine whether there is evidence to support these findings, they should be upheld unless there is no evidence from which a rational trier of fact might have derived them. "Great weight . . . is to be accorded to the inferences which are drawn by the state courts. In a dubious case . . . the state court's determination should control." *Culombe, supra*, at 605. The Supreme Court should substitute its own inferences for those of the state courts only when review of the "uncontested external happenings" indicates "unmistakably" that the state court has wrongly characterized the evidentiary facts. *Id.*

Many of this Court's decisions on the proper measure of respect for trial court conclusions arose in the context of confessions alleged to be involuntary. A finding of voluntariness, like many of the findings with which petitioners here take issue, is necessarily "conclusory." Moreover, the determination of the ultimate fact will frequently dispose of the question of constitutional law to which it is material—to be precise, the question whether the state has violated the defendant's Fifth Amendment right against self-incrimination, which is quite as high on any ladder of constitutional priorities

as the rights asserted by petitioners here.[4] Where a defendant contests a state court finding of voluntariness, therefore, the Supreme Court must look behind the conclusion to the record. But in so doing the Court will assume the resolution of every incidental factual dispute in favor of the ultimate conclusion reached by the trial court, *even where the trial court opinion does not explicitly resolve each such intermediate question*:

> [A]ll testimonial conflict is settled by the judgment of the state courts. Where they have made explicit findings of fact, those findings conclude us and form the basis of our review—with the one caveat, necessarily, that we are not to be bound by findings wholly lacking support in evidence. . . . Where there are no explicit findings, or in the case of lacunae among the findings, the rejection of a federal constitutional claim by state criminal courts applying proper constitutional standards resolves all conflicts in testimony bearing on that claim against the criminal defendant. In such instances we consider only the uncontested portions of the record: the evidence of the prosecution's witnesses and so much of the evidence for the defense as, fairly read in the context of the record as a whole, remains uncontradicted.
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> Culombe v. Connecticut, 367 U.S. 568, 603-04 (1961) (opinion of Frankfurter, J.) (footnote omitted).

Petitioners seek to bring this case within a narrow exception to the rule of the Supreme Court deference to state court findings of fact. In Time, Inc. v. Firestone, 424 U.S. 448 (1974), the Court stated that such deference "is predicated on our belief that at some point in the state proceedings some factfinder has made a conscious

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[4] These cases were decided prior to Miranda v. Arizona, 384 U.S. 436 (1966). They are logically still applicable in cases where "voluntariness in fact" is at issue despite technical compliance with the forms prescribed in *Miranda*. *Lyons* was cited by the Court in Time, Inc. v. Firestone, 424 U.S. 448, 464 (1974) as defining the general standard for Supreme Court review of state findings of fact.

determination of the existence or nonexistence of the critical fact." *Id.* at 463. In that case the trial judge had not submitted the question of the defendant's fault to the jury, since under Florida law the tort of libel did not require a finding of fault. This Court held that the defendant's constitutional rights would have been violated by a libel judgment without a finding of fault, and the Court could not tell whether one of the courts below had made such a finding. The Court refused to regard the words "journalistic negligence" in the Florida Supreme Court opinion as indicative of a finding of fault, since the opinion generally proceeded on the assumption that no such finding was necessary, and the two-word phrase in question might have been simply an epithet expressing the Florida court's general displeasure with the defendant's conduct rather than a "conscious determination" of fault in accordance with a constitutionally acceptable standard. *Id.* at 461-64. The case was remanded for a determination by the state courts of the fault question.

This case falls within the general rule of Supreme Court deference to state court fact findings, and not within the exception announced in *Firestone*. Conceding *arguendo* that the trial court erred in assuming that it could award damages to merchants injured by a nonviolent secondary boycott, the trial court opinion nevertheless clearly indicates a "conscious determination" that threats, violence and pervasive fear played an important role in the success of the boycott. Moreover, the Mississippi Supreme Court based its opinion *entirely* on the "agreed use of illegal force, violence, and threats," never reaching the question whether a nonviolent and voluntary boycott could be penalized without violating the First Amendment. This explicit finding of fact cures the constitutional deficiency, if any, in the trial court opinion. As the Court said in *Firestone*:

> Nothing in the Constitution requires that assessment of fault in a civil case tried in a state court be made

> by a jury, nor is there any prohibition against such a finding being made in the first instance by an appellate, rather than a trial, court. The First and Fourteenth Amendments do not impose upon the States any limitations as to how, within their own judicial systems, factfinding tasks shall be allocated.
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> *Id.* at 461 (per Rehnquist, J.).

Petitioners attack the opinions of the courts below in several ways that openly or subliminally suggest that this Court simply disregard the state courts' findings and inferences. For instance, the trial court concluded that "some defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers." Chancery Court Opinion at 39b. The petitioners point out that this finding is "conclusory," as findings tend to be; they then suggest that the next sentence in the trial court opinion, which alludes to boycott tactics other than violence, was intended to serve as a list of "examples" of such violence. The reader is left with the impression that there must have been no violence at all. See Brief for Petitioners at 12.

Petitioners also make much of a sentence in the Supreme Court opinion stating that force, violence and threats were "present" during the boycott, implying that this sentence lends support to their own contention that the violence was sporadic and perhaps even coincidental. But this sentence was in a paraphrase of a Fifth Circuit opinion; elsewhere the Supreme Court finds that threats and violence were pervasive and that the petitioners had agreed to use these tactics. *See, e.g.*, Mississippi Supreme Court Opinion at 14a-19a, 20a, 23a, 24a.

The petitioners state that the "plain fact" is that the boycott succeeded because of voluntary and constitutionally protected activity and that the trial court was wrong in its finding that "pervasive fear" was instrumental in preventing trade with the white merchants. Brief for Petitioners at 33; *see* Chancery Court Opinion at 20b,

37b-38b. They advance two arguments in support of this "plain fact": First, when the trial judge listed a number of incidents that "strikingly revealed" the "atmosphere of fear and violence that prevailed among blacks," he listed only about a dozen such incidents. Second, some witnesses (mostly the petitioners themselves) testified that they were not afraid. These, however, are not appropriate arguments for Supreme Court rejection of state court conclusions. "The fact that there was evidence which would justify a contrary conclusion is immaterial. To triers of fact is left the determination of the truth or error of the testimony." *Lyons*, *supra*, at 603. And the list which petitioners treat as exclusive was in fact only one of a number of references in the Chancery Court opinion to the violence, the threats of violence, and the consequent pervasive fear of violence in Port Gibson. Nowhere did the trial judge suggest that he based his conclusions solely on this list, and he was not bound to do so.

In addition to claiming that the state court findings are too conclusory to merit respect, the petitioners complain that these findings are not conclusory enough. The petitioners' brief asserts frequently that the state courts "did not resolve" certain questions: no violent act was found to have been done by the petitioners except for the destruction of a flower garden; no damage was found to have been caused as a result of threats and violence; the NAACP was not found to have approved of any physical violence. These statements are half-truths only insofar as they refer to the state courts' failure to use certain words and phrases. The courts below found, for instance, that "the NAACP designated a group of young black males as 'enforcers,'" that NAACP Field Secretary Evers announced at an NAACP meeting that boycott breakers would be "watched" and that "any 'uncle toms' who broke the boycott would 'have their necks broken by their own people," that people were in fact "physically assaulted for continuing to trade

with white merchants after being warned," that physical harm to boycott breakers "was promised by the Field Secretary of the National NAACP, Charles Evers, on at least two occasions, and it is apparent that black people believed him. This NAACP-sponsored boycott was a definite success insofar as economic damage to the white merchants was concerned . . . ." Chancery Court Opinion at 17b-19b, 37b-38b. The Mississippi Supreme Court adopted these findings as its own and added an explicit finding that the defendants (with the exception of the 39 against whom the court dismissed the lower court judgment after an "adequate search of the record") had engaged in "[t]he agreed use of illegal force, violence and threats." Mississippi Supreme Court Opinion at 15a, 23a, 26a.

The petitioners' charge that the courts below "did not resolve" conflicts in the testimony is coupled with innuendoes about the courts' application of the law of evidence. The "competence" of some evidence is questioned, and petitioners complain that as party witnesses they were "subjected to leading, repetitive, browbeating and almost completely unchecked examination." Brief for Petitioners at 27. This facet of the petitioners' attack on the record is perhaps their very weakest argument. Adverse party witnesses *are* subject to "leading" and "almost completely unchecked examination". Much of the testimony in this case was testimony about what witnesses had heard rather than about what they saw, because whether people *believed* harm would come to boycott breakers was a material and disputed fact. Other evidence was admitted within the various exceptions to the hearsay rule. The record reflects that the trial judge sustained many of the petitioners' objections; some hearsay evidence was admitted without objection; the petitioners did not argue any evidence questions on appeal, nor assign these questions in their petition to this Court for certiorari. Petitioners do not in any case argue that these questions have constitutional significance.

The forms of action are dead. The state courts did not violate the Constitution by failing to couch their ultimate conclusions in words that anticipate and precisely negate each of the majestic generalities of the petitioners' brief. Nor did they violate the Constitution by failing to state with regard to each evidentiary fact, "We find that witness X lied when he said Y on page 12,352."

A fair reading of the opinions of the courts below indicates that these courts resolved the essential issues adversely to the petitioners. They found that violence, threats of violence and the consequent pervasive fear contributed materially to the success of the boycott; that the Field Secretary of the NAACP promised at the outset that physical harm would befall boycott breakers; that after such violence had happened to a number of boycott breakers, Evers and other boycott leaders promised more of the same; and that all of the present petitioners manifested their support for these tactics. We believe that the only question before this Court is whether there is evidence in the record—not in the petitioners' brief, and not in the parts of the lower court opinions which petitioners would substitute for the record as the only permissible source of evidentiary facts—on which the lower courts might reasonably have based their conclusions.

III. THE RECORD STRONGLY SUPPORTS THE FINDINGS OF THE COURTS BELOW THAT VIOLENCE, THREATS AND PERVASIVE FEAR WERE CENTRAL AND EFFECTIVE ENFORCEMENT DEVICES

The facts of this case according to petitioners involve "only twelve acts of 'enforcement' even arguably connected to the boycott." Brief for Petitioners at 28. Petitioners would have this Court believe that even these twelve acts were probably not connected to the boycott at all, or that they "lack any significance" because "no act of physical violence is described." Petitioners even

characterize these acts, which include shooting into houses in the middle of the night and the beating of an old man, as having had " 'victims' " rather than victims. *Id.* at 33.

a) The "Twelve Sporadic Incidents" acknowledged by Petitioners.

Petitioners do not suggest how many acts of violence it takes before a movement loses its nonviolent character and its victims their quotation marks. The list to which they refer—actually describing at least fifteen separate events—was only illustrative of the trial judge's conclusion that an "atmosphere of fear . . . prevailed among blacks" during the Port Gibson boycott. Chancery Court Opinion at 35b. An examination of the list and of petitioners' reasons for regarding it as trivial, however, is instructive:

1) *The Gilmore shooting.* James Gilmore testified that he was sitting at home late one evening with his wife and baby when they heard the squealing of a car's brakes outside. When he went to the window, men in the car fired shotgun blasts into the house. He and his wife "hit the floor" and stayed there until they heard the car drive off. Gilmore got into his car and chased the other car, eventually forcing it off the road. Gilmore identified three of the petitioners, all leaders of the Black Hats, among the six men in the car. App. 326-32. The trial judge points out that the three petitioners were convicted and that the state supreme court reversed and remanded because of a deficiency in the grand jury. Petitioners' brief therefore treats the incident as unrelated to the boycott, although the trial judge observes that Gilmore had broken the boycott. Gilmore testified at the trial of this civil case, naming the petitioners as the guilty parties; the trial judge obviously regarded the shooting as boycott-related.

2) *The Cullens shooting.* Petitioners say that the trial judge "implied, but did not find" that the shots were fired because Laura Cullens was not observing the boycott. Laura Cullens testified that she had received threat-

ening phone calls saying "that I was uncle tom and I was going to the stores and violating the NAACP law." App. 392. Her name had been called out at NAACP meetings where she had been "vilified and abused" as a boycott breaker. Chancery Court Opinion at 35b. There was no testimony suggesting any other possible reason for the shooting. The trial judge spent a paragraph detailing Cullens' problems with the NAACP before referring to the shooting. As the Mississippi Supreme Court said, quoting Justice Frankfurter:

> Judges need not be so innocent of the actualities of . . . conflict as to find in the Constitution, state or federal, a denial of the right of Mississippi to conclude that the use of force was not the conduct of a few irresponsible outsiders.
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> Mississippi Supreme Court Opinion at 20a, quoting *Meadowmoor, supra*, at 295.

This is a civil proceeding. The evidence, albeit circumstantial, was overwhelming that the shooting was in retribution for Laura Cullens' breaking of the boycott, and the trial judge obviously so concluded. His failure to identify "any individual Petitioner . . . as having committed" the act, Petitioners' Brief at 30, is irrelevant.

3) *The destruction of Murriel Cullens's Car.* Cullens testified to numerous threats of physical violence that he had received concerning his failure to observe the boycott. App. 397-99. There was no other suggested motive. This is not enough for the petitioners, who say that "there is no evidence to support any inference that this vandalism was related to the boycott."

4, 5) *The threats against Johnny and Susie Cox and the shots fired at them.* The shooting happened about a week after Mr. and Mrs. Cox had asked a policeman to escort them into the boycotted cleaners. Johnny Cox testified that one of the petitioners had threatened him at the time of the incident at the cleaners. App. 308-09. Cox identified two of the petitioners, including the storewatcher who threatened him, as the men who fired the shots that narrowly missed him and his wife. Petition-

ers discuss the laundry incident at length and find that the Coxes had nothing to worry about, then dismiss the shooting with the observation that the trial court did not "find who fired" the shots. Brief for Petitioners at 31.

6) *The destruction of Mrs. Butler's flower garden.* Although one of the petitioners, a Black Hat, testified that he committed this act in retribution for an elderly woman's violation of the boycott, the petitioners discount it because the trial court did not find that it caused any particular person to be afraid. Petitioners' Brief at 29, 33. The frequent and somewhat lighthearted references to this incident in petitioners' brief suggest that petitioners may regard the destruction of flower gardens as a form of expression protected by the First Amendment.

7) *The beating of Preacher White.* The petitioners say there is no "competent evidence" of this event or of its connection to the boycott. The trial court's application of the law of evidence is not one of the issues presented for review by this Court. Preacher White was deceased at the time of the trial. Chief Porter testified that White had come to him asking for help. White told Porter that he had been stripped and beaten for violating the boycott. App. 120-23. White also complained of threats of further retribution. *Id.* Many other witnesses, including some petitioners, testified that they had heard White had been beaten because he broke the boycott. *See, e.g.*, App. 163-64, 284, 303.

8) *The taking of Eddie Lewis's bottle of whiskey.* Alfred Lee Davis was a Black Hat who was serving as a store-watcher and accosted Lewis on the street as he left the boycotted liquor store, cursed him for dealing with whites and took the liquor he had just purchased. App. 325-26. The petitioners dismiss this incident because Davis was "never a defendant in this case," but many boycott organizers including many of the Black Hats were not sued because they could not be found. This was obviously an instance of boycott enforcement, and the trial judge treated it as such, characterizing

Davis as "an NAACP member and activist in the black boycott" as well as a member of the Black Hats. Chancery Court Opinion at 20b, 37b.

9, 10) *The Willie Myles incidents.* The trial court noted that Willie Myles received threats ("Somebody called my wife and told her they were going to burn my house down, and that she wouldn't have no job at school. . . . Because we didn't participate in the civil rights. . . . In the boycott . . . ," App. 335-36) after his name was called out at NAACP meetings as a boycott breaker. Later he was warned that some men planned to whip him because he had bought gasoline from a boycotted station, and he was followed by some men who forced him off the road. They fled when they saw that he had a gun. App. 336-41. The petitioners find that these men must not have been enforcing the boycott because Myles thought that they lived in an adjoining county. Brief for Petitioners at 34. This is a non sequitur. Myles thought that the men were from Fayette, a few miles from Port Gibson. App. 336. Charles Evers lived in Fayette and had plenty to do with the Port Gibson boycott.

11) *The slashing of Jasper Coleman's tires.* Jasper Coleman had been warned by members of the Black Hats not to trade with white merchants, but he ignored their warnings. Chancery Court Opinion at 37b. His tires were slashed in the middle of the night, and he later heard that it was because he had broken the boycott (App. 351), but petitioners insist that the incident cannot be used as evidence because the individual perpetrator was not identified.

12, 13) *The beating of Emerson Davis and the threats on his life.* The trial court apparently believed Davis's version of the incident in which he was beaten for breaking the boycott, but the petitioners believe Rudy Shields, the leader of the Black Hats whom the trial judge said was "the principal figure in several altercations." Chancery Court Opinion at 35b. The trial judge notes that

Davis was characterized as an "Uncle Tom" and that petitioner James Bailey threatened to kill him. Chancery Court Opinion at 37b. Petitioners infer from this juxtaposition that the trial court is seeking to penalize protected speech, but we suggest that the trial court's "uncle Tom" reference was to James Bailey's motive for wanting to kill Davis. Davis himself testified that Bailey picked a fight with him because "[h]e was a civil rights worker, and he wanted to get up a rowl." App. 375.

14, 15) The trial court found that "on at least two occasions" Charles Evers had "promised" physical harm to boycott breakers, and that "it is apparent that the black people believed him." Petitioners say that there was only one time, that it was after many of the instances of violence had already occurred, and that in any case it was protected speech. The trial court found that on April 1, 1966, in the NAACP meeting announcing the beginning of the boycott, Evers had promised that if black people break the boycott "your necks will be broken by your own people." Chancery Court Opinion at 17b-18b. Petitioners say Evers did not say this *in 1966* because only Sheriff McKay testified to it; but at that very point in the opinion the trial judge notes the sheriff's exceptional fairness and credibility as a witness, so it is evident that petitioners are quarreling with an express finding of fact for which there is reasonable evidence in the record. *See* Chancery Court Opinion at 17b-18b & n.2, App. 83, 100-01, 212-13. Evers's even more explicit statement in 1969 that "if we catch you going in those racist stores we're gonna break your damn neck" is undisputed.

b) Evidence of threats and violence outside the list acknowledged by Petitioners.

1) *Charles Evers's other threats.* The two promises to break the necks of uncooperative black citizens are not the only evidence to support the trial court finding that Evers promised violence on "at least" two occasions. In a tape-recorded speech in which petitioners say Evers "specifically

counsels Black persons against the use of violence in the strongest terms" (Brief for Petitioners at 32), Evers denounced violence against *whites* as counterproductive, but had the following messages for *blacks* who were considering breaking the boycott:

—"You go to any of the local black businessman and tell them you have got to go to Vicksburg to get your stuff. And then if they don't carry you, let us know. We'll take care of them later. (Applause.)" App. 91.

—"[I]f you be disobedient now, you are going to be in trouble. Remember that, now listen. Listen good. They are going to start saying, 'You know what, Evers is down there with his goon squad . . . harassing poor ole niggers. . . . Well, good white folks you have been harassing us all our lives. . . . They are our children and we are going to discipline them the way we want to." App. 91-92.

—"None of us better not be caught up here. (Yea) I don't care how old you are, I don't care how sick you are, I don't care how crazy you are, you better not be caught on these streets shopping in these stores until these demands are met. . . . Remember you voted this. We intend to enforce it. You needn't go calling the chief of police, he can't help you none. You needn't go calling the sheriff, he can't help you none. (That's right.) He ain't going to offer to sleep with none of us men, I can tell you that. (Applause.)" App. 94-95.

In his speech Evers also indicated his intention to "chastise" blacks who had expressed opposition to him. App. 88. There is also testimony that Evers said, "We will have our boys out on the streets to take care of you if you go in the stores," and that "we would have them read out at our meeting at the church, and you will be taken care of." App. 63, 66. Throughout the boycott he repeatedly referred to the Black Hats as "my enforcers." App. 62. *See generally* App. 44, 86, 89, 111, 176-215.

2) *The Black Hats.* Charles Evers's admonitions against going to the police, his promises that people would

be "disciplined" and "taken care of," and his jocular reference to his "goon squad" must be viewed in context, as the state courts viewed them. These statements were made before, during and after a period in which numerous acts of violence were committed against boycott breakers. And Evers really did have a goon squad.

The Black Hats or Deacons were a group of about fifty young men who guarded the stores. They wore black hats or helmets and were encouraged to wear other black clothing. They carried weapons and used walkie-talkies in their surveillance of the stores. *See, e.g.*, App. 50-54, 79-81, 129-35, 150, 205-06, 289. They took the names of blacks who patronized the stores so that the names could be read at NAACP meetings and published in the Black Times, but the very presence of the Black Hats deterred many potential customers from entering the stores. *See, e.g.*, App. 69-71, 104, 187-88, 190-93. They engaged in close-order military drills, and were "a cause of pervasive fear among black citizens of Claiborne County, at least to the extent of preventing trade with white businesses." Chancery Court Opinion at 20b. The Black Hats sometimes blocked the entrances to stores or pulled people away by the arm as they were about to enter. App. 57, 63, 159, 372-73, 418. Many witnesses testified that it was widely believed in the community that the Black Hats would punish boycott breakers. *See, e.g.*, App. 158, 219-21, 225-27, 373. Members of the group were involved in many of the violent incidents that took place during the course of the boycott. James Bailey, a 200-pound convicted child molester who was a charter member, testified that people were afraid of the Black Hats. App. 154-61. He testified that "when I joined the NAACP I was kind of like a kid. If there was any fight in the neighborhood, I would jump into it, or I would break car glasses or something like that." App. 155. Marcus Jones, another Black Hat, testified that he thought people who were punished for breaking the boycott had "brought it upon themselves." App. 288. The trial court

concluded that the presence of the Black Hats at the stores was "most effective" in overcoming, "out of sheer fear," the volition of potential boycott breakers. Chancery Court Opinion at 39b; *see* Mississippi Supreme Court Opinion at 20a.

3) *Other acts of violence.* There was evidence in the record of other acts of physical violence than those mentioned by petitioners. William Holt, a young black man who was employed by one of the boycotted businesses, was beaten by Rudy Shields, leader of the Black Hats, because he was on the wrong side of the boycott. App. 55. A white-owned milk truck on which one white and one black employee were attempting to deliver milk to a black school was surrounded by a mob who threw rocks and punctured the tires of the truck. App. 121-22, 168-69, 355-69. Charles Davis, a black man who did not observe the boycott, testified that a brick was thrown through the window of his car, that subsequently the car was set on fire, and that still later the back window was shot out. R249-51. Emerson Davis testified that his windshield was broken and that a glue-like substance was put into his automobile engine so that the engine was ruined. App. 374. A white-owned store was burned under circumstances suggesting arson. App. 395-97, 402-06. There were several incidents besides the one mentioned by the trial court in which store-watchers, usually Black Hats, took packages away from black customers leaving white stores. *See, e.g.*, App. 67, 71, 72, 115, 117, 422, 424. "[V]iolence to those who broke the boycott continued to be a way of life in Port Gibson and Claiborne County." Brief of Mississippi Action for Progress in Mississippi Supreme Court at 21.

4) *Other threats of violence.* Against this violent background, threats of violence were most effective in enforcing the boycott. The trial judge mentioned an incident, not included in the petitioners' list of twelve, in which a black man named Ernest Darden was dissuaded from shopping in a white-owned store after a group of about

fifty people surrounded the car in which his wife and children were sitting. App. 44-48. The sheriff offered Darden his assistance but petitioner Calvin Williams (sounding what was apparently a popular theme among boycott leaders) told him that the sheriff "ain't gonna sleep with you." App. 83-84. Black citizens were told repeatedly that they would be "dealt with" or "taken care of," that their houses would be burned, that bricks would be thrown through their windows, that they would be "whipped" if they patronized the boycotted stores. *See, e.g.*, App. 76-77, 110-11, 121, 172, 219-21, 262-63, 297-99, 312, 335-37, 371, 374, 392, 397-401. Although most threats were directed to black persons, one white merchant was told that when he was down at the store that night his wife would be "visited" by the Black Hats. App. 58. Murriel Cullins was told that his mother would be tied up and left for the mosquitoes. App. 410-11.

5) *Fear of violence.* The state supreme court adopted the trial court finding that "[u]nquestionably, the evidence shows that the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants." Mississippi Supreme Court Opinion at 20a. The petitioners suggest that this "fear" might mean "fear of vilification and traduction," since "the record establishes with remarkable clarity the general *absence* of fear in the community." Brief for Petitioners at 29, 31. Their evidence for this assertion is that many of the petitioners themselves testified that they had not heard of any violence. The courts below obviously disbelieved this testimony. Many witnesses, including some of the petitioners themselves, testified that there was a general opinion in the community that boycott breakers would be punished. *See, e.g.*, App. 157-58, 161, 172, 219-20, 221, 225-27, 231-34, 237, 259-60, 262-63, 278-80, 281, 287-88, 290-91, 299, 301, 303, 412, 425-26. Charles Evers, attempting to put some of his earlier statements in the best possible light, testified that

"I have said . . . that if somebody was to have no more sense in their head than to go in there, they might shoot at them. . . ." App. 184. Several ladies testified that they honored the boycott because they had heard of violence and were afraid of what might happen to them if they violated the boycott. App. 219-20, 239, 318, 413, 415. Sheriff McKay testified that he had over 100 complaints from black people who had been threatened with violence or who feared violence; most people, however, were too frightened to file formal complaints. App. 106, 123. Thus it is irrelevant that some of those who were threatened and attacked continued to patronize the boycotted merchants. This means that some people would not allow themselves to be bullied (or "disciplined" by those who regarded them as their "children"), not that there was an absence of fear in Port Gibson. As Susie Cox put it, "You get somebody to come shoot in your house and see how you feel." App. 320.

c) Evidence of manifestations of assent to coercive boycott tactics.

The courts below found that the violence and threats against boycott breakers were common knowledge in Port Gibson. Many of the petitioners themselves testified to this. *See, e.g.*, App. 157-61, 211-12, 219-21, 225-27, 262-63, 299. Moreover, the paramilitary "enforcers" who had been responsible for so much of this impermissible conduct remained on the streets, the vanguard of the boycott movement. Activists in the boycott movement participated in the weekly meetings at which names were read out and then heard about the ugly things that happened to those who had been named. They listened to Charles Evers and others utter "rhetorical" threats that often came true. At some point they had a responsibility to draw conclusions, to move to dissociate themselves from the threats and violence or perhaps even to try to stop them.

The courts below dismissed forty defendants against whom, after a thorough review of the record, those courts

were convinced the plaintiffs had not proved their case. The state supreme court found that the present petitioners "agreed" to "illegal force, violence and threats." The burden is on the petitioners to show that there is no evidence to support these conclusions. Their only attempt to do so is in three footnotes where they list certain things that certain petitioners did, usually without citation to the record, and allege that there is no other evidence that the named petitioners did anything wrong. Moreover, some of the categories used in petitioners' brief ("attended meetings," "engaged in picketing," "encouraged others to boycott") could embrace conduct indicative of participation in or ratification of illegal acts along with conduct that is innocent or constitutionally protected. Brief for Petitioners at 34-36, notes 37-39. Many of the assertions in these footnotes do not reflect all of the record evidence of the individual petitioners' connection with the illegal activities. For instance, 21 of the petitioners were members of the Black Hats, the "enforcers" of the boycott. *See* App. 56-58, 126-27; Chancery Court Opinion at 20b. Petitioners also fail to discuss the positions held within the NAACP organizational structure by W. E. Camphor (R5906), George Henry Walker (R12863, 13069), and Marjorie Brandon (R10882), among others, and dismiss as immaterial the fact that such positions were held by William Matt Ross and Marguerite Thompson. These and similar facts might have provided part of the basis for the state court determinations that these petitioners, unlike the defendants who were dismissed, were parties to the illegal agreement. The boycott was in form and substance an NAACP function. It was at NAACP meetings that the Black Hats were commissioned (*see* App. 129, 146-48), that the boycott breakers were denounced, that NAACP Field Secretary Evers promised to break people's necks. At least two black people were threatened for "breaking the law of the NAACP." App. 334, 392. Attendance at some meetings may have been more important than attendance at others, and participa-

tion in some functions more important than participation in others. The petitioners dismiss it all as irrelevant.

Respondents will, if the Court desires, present an exhaustive review of the record in order to show the precise acts from which the courts below might have concluded that each of the individual petitioners agreed to the violence. In view of the findings of the courts below, however, we do not believe that the bare "no evidence" allegation in petitioners' brief establishes such a burden on the part of the respondents.

IV. THIS COURT HAS NEVER HELD THAT SECONDARY BOYCOTTS ARE PROTECTED BY THE FIRST AMENDMENT, AND SHOULD NOT SO HOLD IN THIS CASE.

We have been principally concerned with defending the holding of the Mississippi Supreme Court: that threats and violence are not constitutionally protected activity and that when a boycott is enforced by threats and violence the state courts may assess damages against those boycott organizers who employed or condoned these tactics. For the purposes of the foregoing discussion we have assumed that if the boycott had been voluntary and nonviolent, the picketing and other activities associated with it would have been constitutionally protected. This assumption, however, is contrary to the jurisprudence of this Court, and this is not the case in which to reverse that jurisprudence.

In National Labor Relations Board v. Retail Store Employees Union, 447 U.S. 607 (1980), this Court reaffirmed the constitutionality of section 8(b)(4)(ii)(B) of the National Labor Relations Act, which prohibits members of labor unions from picketing a "neutral" party—a party with whom the union has no direct dispute—as a means of persuading that party to influence another party to settle a labor dispute. The facts of *Retail Store Employees* were similar to those in this case except in two respects: (1) in *Retail Store Employees* there was no evidence that

the strike activity was marred by violence or threats of violence; and (2) in *Retail Store Employees* the picketers asserting First Amendment claims were members of a labor union picketing for better wages and working conditions, whereas the petitioners in this case were picketing primarily for political reforms. In each case, however, the organizers of the picketing had made a strategic judgment that the most effective way to settle their dispute was to put pressure on a third party to use his influence with their principal adversary. In each case the picketed third party could be viewed as having substantial influence with the principal adversary. The Port Gibson merchants were influential with town officials; the picketed establishments in *Retail Store Employees* did over 90% of their business with the recalcitrant employer. 447 U.S. at 609. In each case the picketing asked purchasers not to transact any business whatever with the "neutral" party. The Court in *Retail Store Employees* held that even a ban on "peaceful picketing" did not violate the First Amendment so long as it banned only picketing "that predictably encourages consumers to boycott a secondary business." *Id.* at 616. The Court cited numerous precedents and added that secondary picketing "spreads labor discord by coercing a neutral party to join the fray." *Id.* But if picketing by its very nature is the sort of expression protected by the First Amendment, that peaceful picketing "spreads labor discord" should be irrelevant to its constitutionality.

Justice Stevens's concurring opinion provided the fullest elaboration of the reasons that a ban on secondary picketing might not violate the First Amendment. His opinion is discussed in section I(a), page 8 *supra*. Although the opinion speaks of "labor picketing," the reasons given are equally persuasive when applied to any picketing by an organized group seeking to exert pressure for compliance with demands. Picketing "is a mixture of conduct and communication" in which "the conduct element rather than the particular idea being expressed . . .

often provides the most persuasive deterrent to third parties about to enter a business establishment." The statutory ban only affected "that aspect of the union's efforts to communicate its views that calls for an automatic response to a signal, rather than a reasoned response to an idea." 447 U.S. at 619. Picketing, in other words, is sometimes subject to regulation because it sometimes appeals to fear rather than to reason. If this is true for the purpose of evaluating the constitutionality of the federal labor laws, it should be just as true for the purpose of evaluating the constitutionality of the common law of civil conspiracy as applied by the state courts. Any distinctions between the labor context and other contexts should appear of record, and there should be no blanket rule against state prohibitions of peaceful picketing in nonlabor contexts.

a) The Constitution does not distinguish between acts committed in the course of pursuing "civil rights" and identical acts performed for other reasons.

Petitioners, however, suggest that as a matter of constitutional law a "civil rights boycott" must be treated differently from other boycotts. Indeed, they suggest that this Court has already held that "labor picketing" has been distinguished from "public protests concerning the desegregation of local schools" on the ground that the latter rest on a higher "rung of the hierarchy of First Amendment values." Brief for Petitioners at 45 n.48.

We urge that the proffered distinction does not accurately reflect the Court's holdings and is contrary to the letter and the spirit of the First and Fourteenth Amendments. The very constitutional provisions that provide for freedom of expression and equal protection of the laws should not be held to protect one individual who chooses to express himself in a certain way for a certain purpose, while leaving another individual open to civil and criminal penalties because he chooses to express himself in precisely the same way but to pursue a different goal. The Constitution does not respect status, and it does not notice whose ox is being gored.

> The interests of the contestants in a labor dispute are primarily economic, but it has long been settled that both the employee and the employer are protected by the First Amendment when they express themselves on the merits of a dispute in order to influence its outcome. . . . We know of no requirement that, in order to avail themselves of First Amendment protection, the parties to a labor dispute need address themselves to the merits of unionism in general or to any subject beyond their immediate dispute.
>
> Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748, 762-63 (1976).

It may be true, of course, that labor activity generally partakes of certain characteristics that take it outside the scope of the First Amendment, and that political activity generally does not partake of these characteristics. But to hold that one person seeking better wages and working conditions has fewer rights per se than another who happens to be seeking the appointment of a member of his race or faction to the Zoning Commission would be ironic and dangerous.

None of the cited cases stands for the proposition. Abood v. Detroit Board of Education, 431 U.S. 209 (1977), held that the worker's right to freedom of expression and association takes constitutional precedence over the union's right to contract. Carey v. Brown, 447 U.S. 455 (1980), held that the state could *not* discriminate *against* political picketing. It did not hold that the state could discriminate against labor picketing, much less that such a distinction is constitutionally required.

If the Court holds in this case that the picketing and other boycott activity was subject to absolute First Amendment protection, a contrary holding in a labor case with otherwise identical facts would rest on a distinction without a difference. *See* Brief Amicus Curiae of the AFL-CIO at 3-11 (suggesting First Amendment limitations on recovery against "membership groups," including both labor organizations and other political associations, for violence committed by some members of the group in

the course of group activities). Nor would the collateral consequences of a holding for petitioners be limited to labor cases. In light of this Court's holdings that expression is not less free because the speaker has an economic motive, *Virginia Pharmacy Board, supra,* such a decision would logically entail narrower constitutional limitations on unfair trade practices laws which prohibit modes of expression identical to those employed by petitioners here.

b) The facts of this case—violence, threats and mixed economic and political motives—make it an inappropriate vehicle for a holding that political boycotts are constitutionally protected.

If a constitutional distinction can be made between labor picketing and other picketing, it must be that labor picketing more frequently partakes of the threatening, constitutionally unprotected characteristics of communication mixed with conduct. Perhaps in a case in which violence and threats did not play a prominent role, the Court could find a basis for such a general distinction. This is not that case. Few labor cases will suggest as strongly as this case that at least some potential customers were frightened rather than convinced.

Moreover, the mixed political and economic motives in this case would lend themselves to extension of the holding into other contexts. The trial court found that some of the boycott leaders were major stockholders in a grocery and clothing store called "Our Mart," which as a result of the boycott "became an instant success." Chancery Court Opinion at 25b. The trial court also found that similar boycotted businesses lost sales and profits during the period of Our Mart's increase. *Id.* Nor is this the only economic aspect of the boycott. Even if Our Mart were found upon a review of the record to be an incidental effect of the boycott rather than a motivating cause, the original list of demands included demands that the merchants hire more black employees. Although to this extent the boycott could be characterized as primary rather than secondary and thus distinguished from the constitutionally unprotected activity in *Retail Store Employees,*

a holding in this case that picketing for the purpose of securing employment is pure First Amendment expression immune to state regulation would be difficult to distinguish from cases arising in other labor and economic contexts.

We do not believe that it is necessary for the Court to reach the question whether peaceful secondary picketing activity is constitutionally protected, since the Mississippi Supreme Court based its decision entirely on the enforcement of the boycott by threats and violence, and since the record provides abundant support for this holding. If the Court should find it necessary to reach this issue, we urge that the decision not rest on an absolute distinction between identical forms of expression directed toward different ends.

V. THE INJUNCTION GRANTED BY THE TRIAL COURT IS NOT PROPERLY AT ISSUE IN THIS PROCEEDING.

Although petitioners devoted approximately two-thirds of their petition for certiorari to attacking the injunction issued by the trial court, they devote only five pages of their brief to this question. We agree with this revised estimate of the importance of the injunction. The injunction is not at issue in this proceeding because it is moot, and because defendants waived the issue by pleading that it was moot and by not arguing the issue on appeal. More to the point, neither side in the litigation is concerned about the injunction, and both sides are very much concerned about the question of liability for damages.

Petitioners state in their brief that in the proceeding below "they used the word 'moot' only in their argument that, because the boycott was then inactive, there was no longer any basis for granting injunctive relief as a matter of state law." Brief for Petitioners at 11 n.8. *But see* Brief of Appellants NAACP et al. in the Mississippi Supreme Court at 35 n. 35: "The Mississippi attachment in chancery jurisdictional provisions have been ruled unconstitutional by both federal courts in this

State. [Citations omitted.] Since the action sounds in tort, and the injunctive aspects of the case are now moot, the case if remanded should properly be retried in circuit court as an action at law."

Petitioners argued the mootness of the injunction in an effort to defeat the jurisdiction of the chancery court. That this argument is no longer tactically advantageous does not affect the rule that a party is bound by his pleadings.

> The sworn allegations of a bill by which a litigant seeks to move a court to its relief may not be lightly disavowed by affiant when, in another proceeding, its recitals rise to plague him in an inconsistent course.

Standard Oil v. Crane, 23 So. 2d 297, 301 (Miss. 1945). *See also* Thomas v. Bailey, 375 So. 2d 1049 (Miss. 1979); Ivor B. Clark Co. v. Southern B. & I.D. Co., 399 F. Supp. 824 (S.D. Miss. 1974).

The petitioners also waived their right to argue that the injunction was improper on the merits by failing to argue this assignment of error in the Supreme Court of Mississippi. Under Mississippi law an assignment of error not argued in the brief is waived and will not be considered by the appellate court. Vail v. City of Jackson, 41 So. 2d 357 (Miss. 1949); Kennedy v. Little, 2 So. 2d 163 (Miss. 1941); B.L. Bruce & Co. v. Brogan, 166 So. 350 (Miss. 1936). The passing reference in a footnote to the mootness of the injunction will not suffice as an argument on the merits, since the petitioners had a duty to show by plausible argument with supporting authorities in what way the lower court erred, and upon their failure to do so the court was bound to conclude that there was no error. Wood v. Gulf States Capital Corp., 217 So. 2d 257 (Miss. 1968).

The trial court relied on Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1942), in issuing the injunction. We discuss *Meadowmoor* in part I(a), pages 8-9 *supra*. Petitioners argue that there was more violence in *Meadowmoor* than in this case; we are not prepared to concede that the respective quantities of vio-

lence in the two cases were of different orders of magnitude, and we see no constitutional distinction.

If, however, this Court finds that the injunction is not moot and that the issue has not been waived by petitioners, we have no objection to the modification of the injunction so long as petitioners are enjoined from acts of violence and from threats of physical violence against respondents and those who choose to do business with them.

CONCLUSION

For the reasons stated above, the resolutions of the disputed factual questions by the state courts should be respected by this Court, and the judgment awarding damages to the respondents for the injuries they suffered as a result of the tortious conduct of the petitioners should be affirmed.

Respectfully submitted,

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No. 81-202

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

RESPONDENTS' SUPPLEMENTAL BRIEF

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RESPONDENTS' SUPPLEMENTAL BRIEF

At the oral argument of this case on March 3, 1982, Justice Blackmun directed counsel for respondents to prepare a supplemental brief specifying the acts committed by each of the petitioners giving rise to liability for damages. This brief is submitted to comply with that order.

I. MANAGEMENT OF THE BOYCOTT.

The basis on which the Mississippi Supreme Court held that petitioners were liable for damages was "the

agreed use of illegal force, violence and threats." Mississippi Supreme Court Opinion at 23a.[1] The state supreme court held that the chancellor was "bound to [find] from the record" that "the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants," and that those defendants who actually engaged in acts of physical force and violence were "acting for all others" when they did so. *Id.* at 20a.

In our opening brief we argue that the state courts did not violate the Constitution by holding defendants liable for damages caused substantially by constitutionally unprotected conduct. Resp. Br. at 3-17. We also argue that the requisite intent can be inferred from conduct. *Id.* at 39-41. One important source of evidence is participation in the management of the boycott. Anyone who participates in the decisionmaking functions of an enterprise, with full knowledge of the tactics by which the enterprise is being conducted, manifests his assent to those tactics, and the Constitution does not prohibit courts from finding as a matter of law what is true in fact.

The ongoing management of the Port Gibson boycott was conducted at a series of meetings. Participation in these meetings was the principal way in which boycott activists exercised control over the conduct of the boycott for good or ill. Inferences of assent to the conduct of the boycott from participation in these management meetings is a far cry from a finding of "guilt by affiliation." Anyone who worked for the boycott intending that coercion contribute substantially to its success—anyone who intended that people who did not wish to boycott should

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[1] Citations to the state court opinions are to the Appendices to the Petition for Certiorari.

be frightened into compliance[2]—was a willing participant in a conspiracy that cannot claim the protection of the First Amendment. The facts in the record fully support the state courts' finding that this conspiracy included everyone who participated actively in the management of the boycott.

Although one or two of the boycott meetings had as many as 500 to 600 people in attendance, only about 75 to 90 persons participated in the regular meetings. R1426-32, 1271-74.[3] These meetings were held every Tuesday night, and were for the purpose of discussing, making decisions about, and assuring the continued success of the boycott. R1224-27, 2783-99, 6970. At these meetings the names of boycott violators were promulgated. J.A. 158, 165-66. The organization that became the Black Hats originated at an early boycott organizational meeting. J.A. 147-48. Decisions were made either

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[2] It is important to observe that in order to be liable, a petitioner need not have intended that violence actually occur when he uttered a threat of violence. It is enough that he have intended that his threat result in instilling *fear* of violence into prospective customers and thereby injuring the business relations of the respondents.

[3] Wherever possible, citations are to the Joint Appendix (J.A.). Citations to portions of the record not in the Joint Appendix were originally compiled partly from the copy of the record that is on file with the Court, and partly from an abstract of the record prepared by the petitioners in perfecting their appeal in the Mississippi Supreme Court. These citations have been checked against the record for the accuracy of their substance, but not for the accuracy of their page numbers. On April 6, 1982, counsel for respondents visited the office of the Clerk of this Court in an attempt to check the citations in this brief against the record, and was told that the record is not now available for this purpose and cannot be made available in the foreseeable future. To the best of our knowledge this copy of the record is the only copy in existence with complete and accurate page numbers. Therefore this brief is being filed with some page numbers that have not been checked, and some references to record page numbers are probably slightly inaccurate. We apologize to the Court for any inconvenience.

by consensus or by voting. R2484-89, 2783-99, 3791-95, 3833-40, 3923-26, 5604-06, 7276-78. The case of petitioner Bernice Lee, who was accused of buying eggs from a boycotted merchant, is illustrative. Her grocery store was placed under boycott at one Tuesday night meeting, store watchers were stationed outside, and for a week the store had practically no business. The following Tuesday Mrs. Lee and her husband attended the meeting and asked to be removed from the boycott, saying that they had not known they were violating the boycott by having a white merchant deliver eggs for resale. The body voted to remove the Lees from the boycott. The storewatchers then stopped guarding the store, and the normal level of trade resumed. R7276-78. Although most of the petitioners tended in their testimony to minimize the importance of the meetings and the extent of their own participation therein,[4] often testifying

[4] In anticipation of any reply brief petitioners might file, we readily concede that there is some record evidence to support inferences other than those we suggest in this brief and in our opening brief. We are, however, attempting to show that there is support in the record for the findings the state courts made: (1) that the boycott succeeded in large part because of violence, threats, and the consequent pervasive fear; (2) that petitioners intended this result. "The fact that there was evidence which would justify a contrary conclusion is immaterial. To triers of fact is left the determination of the truth or error of the testimony." Lyons v. Oklahoma, 322 U.S. 596, 603 (1944). Petitioners have attempted to get around this rule by asserting that certain evidence is "uncontradicted in the record." *See* Pet. Rep. Br. 3 n.2 (when Mrs. E. J. Jennings testified that she was afraid "something might happen" to her if she broke the boycott, "the only such fear she testified to was again the fear of being 'embarrassed' and socially ostracized."). *But see* J.A. 237 (testimony of Mrs. E. J. Jennings): "Well, I hear that sometime they may take it away from you, or do something to you." "Q: Take what away from you?" A: Whatever you've got. Whatever you buy." Petitioners apparently believe this testimony is irrelevant because Mrs. Jennings might have thought that in other places they take people's packages away but in Port Gibson they merely embarrass people. This is not what the state courts found.

that they did not remember much that was said, the record reflects that the meetings are where the decision-making power rested, and that this power was exercised.

The participants in these meetings knew that fear was a major factor in the success of the enterprise they commanded—fear of injury to person and property, to be carried out by the men they had designated as the enforcers of the boycott. Chancery Court Opinion at 17b, 20b; *see* J.A. 76-77, 110-11, 121, 157-61, 172, 211-12, 219-21, 225-27, 231-34, 237, 259-63, 278-81, 287-91, 297-301, 303, 312, 335-37, 371-74, 392, 397-401, 412, 425-26. These men were the source of the names that were denounced at the weekly meetings, and they were also frequently observed destroying goods that customers had purchased at the stores they had been assigned to guard. *See* J.A. 67, 71, 115, 117, 422, 424. Yet they were not taken from their posts and replaced by a system of voluntary compliance; there is no evidence that any of the petitioners even admonished them for their enforcement methods; the successful system of paramilitary enforcers on the streets and "rhetorical" threats of violence by boycott leaders was left in place for the duration.

Contrary to the petitioners' assertions, it would not have been necessary for them to "begin making purchases . . . immediately upon learning" of violent boycott enforcement in order to avoid liability. Pet. Rep. Br. 14. This suit was not brought against the thousands of people who, from principle or fear or some combination of the two, refrained from buying. It was not even brought against the 500 people who voted to impose the boycott. The petitioners, with only a handful of exceptions, are those whom the record shows were regular participants in the weekly management meetings.

The record supports a finding that the following petitioners participated regularly in the Tuesday night meetings. In some cases the cited testimony specifies that attendance was frequent, and in others the context of the

testimony suggests that the petitioner's attendance was a regular occurrence rather than a rare one:

Ferd Allen (R1249-52, 6648-51, 9676-81, 9692, 9809), Henry Anderson (R2783-99, 3358-70, 8353-58), Alonzo Atlas (R3358-70), Calvin Bailey (R1433-44, 2783-99, 3358-70), James Bailey (J.A. 158-60, R2661-64, 2787-99, 3487-96), McLawrence Bailey (R2783-99, 3923-26), Joseph Barber (R1249-52, 8690-94), Kenneth Barber (R12134-44), Marjorie Brandon (R1252-55, 2783-99, 4431-41, 8167-71), Tullos Brown (R1255-57, 2783-99, 4431-41), Janie Brown (R1252-55, 2783-99, 4431-41, 8167-71), Eddie Burrell (R1257-62, 1484-90, 4431-41, 8986), Robert Butler Jr. R1257-62, 2783-99, 3399-3409, 4431-41, 9823), Arthur Lee Camphor (R1257-62, 2783-99, 4431-41, 5890-92), Irma Rae Camphor (R2783-99, 4431-41), W.E. Camphor (R1257-62, 3833-40, 5878-85), Alberta Coleman (R1257-62, 2783-99, 6651-58, 12229-34), Alexander Collins (1232-33, 1257-62, 2783-99, 11161), Geneva Collins (R1257-62, 2783-99, 4441-47), Thelma Crowder (R1262-63, 2783-99, 4441-47), Dan Currie (R1263-65, 2783-99, 4447-53, 6060-66), Sarah J. Currie (R1263-65, 2783-99, 4441-47, 6168-75), Charles Davis (R2783-99, 4441-47, 62220-22), James Devoual (R2799-2808, 9975), Geneva Durham (R1263-65, 11635-49), Johnny Durham (R1263-65, 2799-2808, 4447-53, 6900-04, 6970), Jim Ellis Jr. (R2799-2808, 3358-70, 3833-40, 4447-53, 8788-90), Charles Evers (R1232-33, 1265-69, 2773-88, 2799-2808, 4454-55), James Gray (R4455-62, 4564-66, 6659-63), Walter Griffin Sr. (R2799-2808, 4455-62), Bernard Gusta (R2799-2808, 4455-62), Leesco Guster (J.A. 165-66, R2799-2808, 3720-26, 4455-62), Clyde Harvey (R2799-2808, 6844-50), Jim Holt (R1265-69, 2799-2808, 4455-62, 9200-04), Willie Jackson (R12611-20), Jesse Johnson (R1269-71, 2799-2808, 4462-67, 13055-65), Roscoe Johnson (R2799-2808, 3571-74, 4462-67, 12819-29), Julia Coleman Jones (R1269-71, 2799-2808, 4462-67, 6470-73), Marcus Jones (R2799-2808, 4462-67, 10123-25), Nathaniel Jones (R1269-71, 2799-2808, 3370-81,

4462-67), Samuel Jones Jr. (R2799-2808, 3370-81, 4462-67), Bernice Lee (R1269-71, 6669-73), Edward Lee (R1269-71, 2840-42), Margaret Liggins (R1269-71, 2799-2808, 4468-72, 6857-60), Julia Lucas (R2799-2808, 4468-72, 12737-48), Nathaniel Martin (R1271-74), Leander Monroe (R1271-74, 2799-2808, 4468-72), Johnny Moore (R2799-2808), Mary Lee Moore (R2799-2808, 7506-10), Ellis Neal (R1274-79, 2799-2808, 4473-78, 6989-95), Amos Newsome Jr. (R1274-79, 2799-2808, 4473-78, 6560-71), James Odom (R2799-2808, 3370-81, 4473-78, 9115), Leona Owens (R2799-2808, 4478-82, 10460-77), William Owens (R1274-79, 4478-82, 8425-29), Evan Roberson (R2799-2808, 4478-82, 6534-38), William Roberson (1279-83, 2799-2808, 2310-30, 4478-82), Mary Ross (R1279-83, 2799-2808, 6754-56, Odessa Ross (R1279-83, 2799-2808, 3566-70, 4482-86, 10880-82), William Matt Ross (R1279-83, 2799-2808, 3571-74, 4482-86), Elmo Scott (R2718-55), Rudolph Shields (R1279-83, 2259-63, 3389-98), Oliver Shinall (R2310-30, 3833-40), Bilbo Smith (R1445-50), Ira Thomas (2799-2808, 4487-94, 13331-32), Carl Thompson Jr. (R1285-87, 4365-70, 4431-41), Marguerite Thompson (R1239-41, 1271-74, 2799-2808, 4487-94), Mack Tisdale (R2799-2808, 4487-94), George H. Walker (R1287-90, 2799-2808, 3370-81, 3571-84, 4494-95), Thelma K. Walker (R1287-90, 2799-2808), Eddie Walls Jr. (R1293-96, 2799-2808, 4495-99, 6659-63), Alex Warner (R1293-96, 2799-2808, 4626-41, 10618-19), Albert Weathers (R2799-2808), Carl Lee Wells (R4501-07), Eddie Lee Wells (R4257-63, 4501-07), Katie Wells (R1293-96, 2799-2808, 3561-70, 4122-25, 4501-07), James Whitney (R2799-2808), Calvin Williams (R1232-33, 1296-99), Ernestine Williams (R2799-2808, 4501-07, 6802-11), Aaron Wilson (R2799-2808, 14142-45).

There is evidence in the record that the following petitioners took leadership roles in the boycott management meetings, by conducting the meetings, reading out names of boycott violators, giving speeches in favor of compli-

ance with the boycott, and/or lecturing on boycott enforcement tactics: Charles Evers (R1167-72, 2773-83), Alexander Collins (R1167-72, 2773-83, 11161), Calvin Williams (R2773-83, 11161), Rudy Shields (J.A. 175, R3389-98, 4980, 5014-16), Nathaniel Jones (R2773-83, 11161), Walter Griffin (R2773-83, 11161), Mack Tisdale (R2773-83), Leesco Guster R3720-26), Geneva Collins (R4441-47), W. E. Camphor (R5878-85, 5906), Eddie Walls (R1244-47).

Petitioner Marjorie Brandon, who served at times as NAACP Secretary, testified that "in the meetings there were statements saying you would be dealt with" if you traded in boycotted stores. She said "dealt with" meant "that they would take care of you, do something to you, if you were caught going in." J.A. 219.

II. BLACK HATS AND OTHER BOYCOTT ENFORCERS.

The role of the Black Hats as a principal cause of the pervasive fear in the community that contributed substantially to the success of the boycott is described at length in our opening brief and in the state court opinions. Mississippi Supreme Court Opinion at 20a; Chancery Court Opinion at 19b-20b, 39b; Resp. Br. at 1-3, 35-37. Once the pattern had been established—warnings to prospective customers, destruction of goods purchased at boycotted stores, public displays of weapons and of military discipline, denunciation of names gathered by the store-watchers, and subsequent violence against the persons and property of boycott breakers—store-watching in Port Gibson became the sort of activity from which a court could reasonably infer an intention to frighten people away from the stores. The destruction of property and other violent acts by store-watchers began in the very first days of the boycott, and within a few days their presence was enough to frighten off prospective customers. J.A. 68, 72, 104.

There is evidence that the following petitioners were members of the Black Hats: Alonzo Atlas, Henry Anderson, Calvin Bailey, James Bailey, McLawrence Bailey, Tullos Brown, Robert Butler, Jim Ellie Jr., Walter Griffin, Clyde Harvey, Jim Holt, Marcus Jones, Nathaniel Jones, Samuel Jones Jr., James Odom, Elmo Scott, Bilbo Smith, George Henry Walker, Carl Wells, Eddie Lee Wells, James Whitney, Calvin Williams. J.A. 50-62 101, 124-27, R788-92, 1126-31, 2086-96, 2899, 3358-81, 4501-07, 8798-8800, 9200-04, 9237-43, 9275-76, 9855-57.

Other petitioners, although there is no evidence that they were members of the Black Hats, served as store watchers: Eddie Burrell, James Burrell, A. L. Camphor, Charles Collier, James Collier, Charles Evers, James Gray, Leander Monroe, Eddie Walls, Albert Weathers, Katie Wells, Aaron Wilson, Janie Brown, Dan Curry, Marjorie Brandon, Willie Moore, Henry Patton Jr., Alexander Collins and Mary Ross. J.A. 423-24, R668-92, 712, 1202, 1204-05, 2073-75, 2086-2100, 5604-06. There was testimony that the store-watching activity was conducted so as to threaten prospective customers. J.A. 423-24. Store-watchers knew that those whose names they gathered frequently met with "punishment" after their names had been read at the weekly meetings. J.A. 158-160.

Rudy Shields, the principal organizer of the Black Hats, was also in charge of directing the store-watchers. J.A. 216-17, R3528-37, 4998. Shields testified that he organized the Black Hats to "frighten off the Klan" (J.A. 216); although there is no evidence of Klan presence in Claiborne County during the boycott, and the evidence overwhelmingly indicates that the purpose of the Black Hats was to enforce the boycott (*see, e.g.*, J.A. 62, 104, 112-13, 126, 134), Shields's characterization of his group supports the state courts' finding that the purpose of the store-watchers was to frighten off prospective customers.

III. PETITIONERS WHO INDIVIDUALLY ENGAGED IN VIOLENCE OR THREATS.

Those petitioners who themselves engaged in violent acts or who threatened violence have provided the best possible evidence that they wanted the boycott to succeed by coercion whenever it could not succeed by persuasion. In the case of any such individual, it is unnecessary to decide whether his participation in meetings or in other intrinsically nonviolent activities was a manifestation of assent to associated violence and threats. One who commits tortious activity in the pursuit of a common plan may be held liable for the effects of other, different torts committed in pursuit of the plan, since his intention to have the plan succeed as a result of such conduct is manifested by his own tortious conduct. In this case, for instance, a petitioner who threatens to beat up Mr. A if he doesn't observe the boycott may be held liable for the effects of another petitioner's threat to break the neck of Mr. B if *he* doesn't observe the boycott; both petitioners are working for the success of the same enterprise, and it is extremely unlikely that the first petitioner wishes to injure the business relations of the merchants with Mr. A by coercion but with Mr. B only by persuasion. *See* Restatement of Torts 2d, § 876 and comments thereto.

There is evidence that the following violent acts or threats were committed by the following petitioners:

Marcus Jones and Bilbo Smith threatened to take Roosevelt Wyatt's package away from him as he came out of a boycotted store. R646.

Calvin Williams told Ernest Darden, after a group of about fifty people had surrounded the car in which Darden's wife and children were sitting, that the sheriff might be able to help Darden go into a boycotted store to get his groceries, "but these white folks ain't gonna sleep with you." J.A. 44-50, 83-84.

Calvin Williams, Rudy Shields and James Whitney drilled the Black Hats in the streets of Port Gibson in military formation with rifles. J.A. 50-54, 79-81.

Rudy Shields beat up a teenaged boy, William Holt, because Holt was on the wrong side of the boycott. J.A. 54-55.

Marcus Jones grabbed James Hudson's teenaged daughter by the arm on the street outside of Hudson's store as he walked by with several other Black Hats. He said, "Come and go with me." J.A. 58-62.

Calvin Williams stood on the steps of the courthouse and said, "If you trade in them stores, any of you, we'll know who they are and my boys will get you." J.A. 76.

Rudy Shields said, "If I catch you shopping, any of my men catch you shopping, we'll be down to your house tonight. You won't have a house tomorrow. We'll burn your house." J.A. 68.

Rudy Shields told a white man on the first day of the boycott, "If I catch you going in that G.D. Store, I'm going to stomp your G.D.A." J.A. 68.

Albert Weathers threatened Preacher White for buying gasoline at a white-owned station. White made an oral complaint to the chief of police; he was afraid to sign an affidavit ("afraid of what might happen to him later," J.A. 123), but asked that the police keep a watch on his house. J.A. 121, 123.

James Bailey tore up Mrs. Butler's flower garden in retaliation for her continuing to deal with white merchants after being warned. J.A. 121-22.

James Bailey was convicted of a theft of tapes, an incident he testified that he thought was related to the boycott. J.A. 154-55.

Marcus Jones, McLawrence Bailey, Rudy Shields, Charles Evers, Calvin Williams, Joseph Barber, Calvin

Bailey, Albert Weathers, and Eddie Lee Wells "physically stopped customers, or prospective customers, from entering the premises." J.A. 70-71.

Calvin Bailey, McLawrence Bailey, James Bailey, and Rudy Shields took packages away from customers (Shields about twenty different times). J.A. 70-75.

Tullos Brown told a customer he had "better not" go into a store. R. 812-14.

Rudy Shields was charged with trespassing, profane swearing and threatening two ladies who were sitting on the porch of a boycotted store. J.A. 107-09.

Rudy Shields, Eddie Lee Wells and another man took tomato plants from a woman who had purchased them in a boycotted store. R. 2045-55.

Rudy Shields and another man confiscated and destroyed bread in the possession of a man trying to make a delivery to a boycotted store. J.A. 114, 117.

George Henry Walker prevented Wes Butler from going into a boycotted store. Butler went and got the police chief to go into the store with the money to pay his bill. R. 2178.

James Bailey (a 218-pound convicted child molester) testified that he sometimes would "pull [prospective customers] away" by the arm while he was on duty as a store-watcher. J.A. 155, 158.

Eddie Lee Wells and another man shot at Johnny and Susie Cox a few days after warning them not to go into a boycotted laundry. J.A. 308-24.

Calvin Bailey, Elmo Scott and James Whitney shot into James Gilmore's house. Gilmore, his wife and baby were in the room into which the shots were fired. Gilmore had been violating the boycott and had heard from other black people that this was "against their law," "they" being the NAACP. J.A. 326-35.

Rudy Shields, Jimmy Ellis and two other men beat up Emerson Davis. Davis testified that "Shields said I was trying to break up his damn boycott." J.A. 369-71.

James Bailey threatened to kill Emerson Davis. The threat was issued during a dispute in which Bailey cut Davis off in an automobile. Davis testified that Bailey "was a civil rights worker, and he wanted to get up a rowl." J.A. 374-75. Bailey testified that a few days before the automobile incident, while Bailey was on duty as a store-watcher, Emerson Davis had gone into a store despite the fact that Bailey had warned him not to go in. J.A. 151-53.

To the best of our knowledge, these are the only incidents—aside from those involving Charles Evers, discussed below—in which specific individual petitioners were identified as the perpetrators of illegal acts. This list does not include, of course, the many acts of boycott enforcement whose perpetrators were never identified or whose victims were afraid to come forward, but which also contributed to the "atmosphere of fear that prevailed among blacks from 1966 until 1970" in Claiborne County. Chancery Court Opinion at 35b.

IV. THE LIABILITY OF CHARLES EVERS AND THE NAACP.

As we point out in our opening brief, the liability of Charles Evers and of the NAACP does not depend on a conspiracy theory properly so called. Rather, Evers himself threatened violence on a number of occasions against boycott breakers. He was acting in his capacity as Field Secretary of the NAACP when he committed these tortious and constitutionally unprotected acts, which clearly manifested his intention to injure the business relations of the merchants by instilling fear in prospective customers. Thus, if the state courts were right in finding that fear was in fact a substantial factor in the success of the boycott, Evers and the NAACP are jointly liable for all damage occasioned by the boycott. This liability is joint with all other petitioners who

acted to injure the business relations of the merchants by threats or violence. Each tortfeasor is liable for the damage occasioned by the torts of the others. Restatement of Torts 2d, § 876. It is not necessary that Evers actually intended violence to occur, but only that he intended for the merchants' business relations to be injured because prospective customers would be *afraid* of violence.

We have cited and discussed in our opening brief Evers's two threats to break the necks of boycott breakers; his threats to "take care of", "chastise", and "discipline" blacks who disobeyed him; and his numerous references to the Black Hats as his "enforcers." Resp. Br. 34-35. The state courts found that "the black people believed him" when he "promised violence." Chancery Court Opinion at 38b. In light of petitioners' efforts to persuade this Court to overturn the state court findings and to construe "discipline," "chastise" and similar language as references to nonviolent "tongue-lashings," we wish to call the Court's attention to further record evidence of Evers's intentions and modus operandi:

Sheriff McKay testified that he once heard Evers threaten to hang the President of Alcorn A&M. R1172-79.

Evers said of the two policeman (one white and one black) who were involved in the Dusty Jackson shooting, "If those two get back on the street you ought to take their pistols off and beat them right there on the street." Exhibit C-43 (Commercial Appeal article of Jerry DeLaughter, April 21, 1969), R4923. It should be observed that Evers's view that the two policemen had murdered Jackson was sharply contested. *See* Chancery Court Opinion at 25b-26b.

In Evers's autobiography he wrote that he kept a store of hand grenades, and that "we meant to use them if we had to." J.A. 205. At trial he testified that the grenades were purely defensive weapons. J.A. 206.

In our opening brief we attempted to use Ever's autobiography to illustrate that when he had used words like "punish" and "take care of" during the Port Gibson boycott, he referred to tactics such as taking bags away from customers, putting sugar in gas tanks, and throwing brickbats through windows. Resp. Br. 4, J.A. 201. Petitioners reply that the autobiography is irrelevant because the quoted passage refers directly to a boycott in Natchez. Pet. Rep. Br. 10 n.9. In context, however, we believe the quoted passage applies to all the boycotts Evers directed (*see* J.A. 201-02), and that when Evers spoke of "disciplining your own family" he did not mean brickbats in Natchez and tongue-lashings in Port Gibson.

Petitioners also commit a gross distortion when they cite our "assertion" that Evers "organized" the Black Hats as his "enforcers." Pet. Rep. Br. 6. We made no such assertion; Evers did not *organize* the Black Hats; we said he *designated* them as his enforcers, and he did. Resp. Br. 9, 35-37; J.A. 62. Petitioners were wrong to accuse us of "approach[ing] the limits of permitted license" when we made a true statement and they made a false statement about what we said.

Petitioners further assert that "his testimony that he never even knew the group existed is uncontradicted." Pet. Rep. Br. 6, Evers testified only that he didn't know the group of storewatchers was *called* the "Deacons," which was the name of a regional paramilitary organization. J.A. 189. He testified that he knew the storewatchers wore black hats, that he knew they marched in military formation, that he knew they were impressive physical specimens who "could take care of business, if necessary," and that he sometimes joined them in their store-watching activities because "every man likes to show his strength sometimes." J.A. 187-93.

The record abundantly supports the state court findings that when Evers threatened people he meant for

them to fear violence. When Evers reminded his audience that they "needn't go calling the chief of police, he can't help you none. . . . He ain't going to offer to sleep with none of us men" (J.A. 94-95), he was not referring to the possibility that boycott breakers would be visited in the middle of the night by people who would administer tongue-lashings.

The NAACP is liable for Evers's tortious acts committed in his capacity as its Field Director. *See Cantrell v. Forest City Publishing Co.*, 419 U.S. 245 (1974) (newspaper that hired reporter was liable for damages occasioned by his libelous article under theory of respondeat superior notwithstanding First Amendment arguments); *NAACP v. Overstreet*, 221 Ga. 16, 142 S.E.2d 816, *cert. dismissed as improvidently granted*, 384 U.S. 118 (1966); Resp. Br. 17-21 and authorities cited therein.

V. OTHER PETITIONERS.

We are unable to determine on what record evidence the state courts relied in finding liability on the part of seven of the petitioners.

Helen Beasley was an NAACP member who testified that she attended no boycott meetings and did not actively participate in boycott activities. R11969-12037. We are unable to identify any evidence that conflicts with Mrs. Beasley's testimony.

Bill Beasley testified that he was an NAACP member who was neither for or against the boycott. He testified that he never attended any NAACP meetings. Although he is identified in petitioners' brief as being one of 39 petitioners who "engaged in picketing, gave speeches, encouraged others to boycott, or disseminated leaflets," Pet. Br. at 35 & n.38, the petitioners give no record citation for this evidence and we can find none.

Calvin Blackburn testified that he observed the boycott but that he never attended meetings. R11555-11628. There was evidence that he participated in marches.

R. 1252. We can find no evidence of his manifestation of assent to threats and violence.

Mary Ella Dee testified that she was an NAACP member who attended only two meetings, that she was in favor of the boycott but did not participate in boycott activities. We can find no evidence to contradict her testimony and no evidence that she assented to violence. One factor on which the state courts might have relied is that as the owner of a grocery store that competed with boycotted stores Mrs. Dee had a financial stake in the boycott. A lower level of participation in boycott activities may have been required for her and for other petitioners, including Nathaniel Martin, Bernice Lee, Ferd Allen and Arthur Wyatt, who owned competing establishments or who owned stock in Our Mart. *See* R7270-78, 8508-25, 9457-60, 9720, 10047-57.

Harvey Ellis and Katie Ellis both testified that they were NAACP members who attended only two or three meetings. R11807-13, 11879-82, 11888-95. We can find no evidence to contradict their testimony, although petitioners state without a record citation that they "engaged in picketing, gave speeches, encouraged others to boycott, or disseminated leaflets." Pet. Br. at 35 & n.38.

Arthur Wyatt is a store owner who is a member of the NAACP but who testified that he was not active in the boycott and that he was threatened for not complying with the boycott. R7037-75. We can find no evidence to contradict his testimony.

We cannot be positive that there is no evidence on which to sustain the state court judgments that these seven petitioners endorsed the conduct of the boycott, but our assiduous search has yielded none except that which is given above. If this Court finds no evidence to sustain a finding that these petitioners endorsed the violent and coercive tactics by which the boycott was conducted, then the Court will be faced with the question of the constitutionality of the trial court judgment hold-

ing petitioners liable on the basis of their participation in a concerted refusal to deal and (at least in the case of petitioner Blackburn) participation in related activities. We have addressed this issue in our original brief. Resp. Br. 41-46. This Court has never held that boycotts are constitutionally protected activity, and this is not the case in which to consider such a holding, for the reasons stated in our original brief.

CONCLUSION

For the reasons stated above and in our opening brief, the judgment of the Mississippi Supreme Court should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-202

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

PETITIONERS' REPLY BRIEF

Respondent merchants do not seriously challenge our position that the First Amendment protects nonviolent activities in support of political boycotts. Nor do they assert that the few incidents of vandalism or violence occurring in Claiborne County during the time of the boycott were perpetrated by or at the direction of the organizers of the boycott. Instead, they have fallen back to an extremely narrow premise from which they seek to defend the decision of the court below. That premise is that a few incidents of vandalism or violence by unnamed persons were really "central to the success of the boycott" (Resp. Br. 1), and that all the petitioners are liable

for all the business losses from the boycott because they purportedly "acquiesced" (Resp. Br. 12) in these incidents.[1] In this reply brief we demonstrate that the merchants' premise is false, that damages cannot be awarded for the effects of protected First Amendment advocacy, and consequently that the judgment below cannot be sustained.

I. THE MISSISSIPPI SUPREME COURT DID NOT MAKE THE FINDINGS ASCRIBED TO IT BY RESPONDENTS AND COULD NOT HAVE DONE SO ON THIS RECORD.

The merchants argue at considerable length that findings of state courts must be accepted by this Court "unless there is no evidence to support them." Resp. Br. 21-29. But it is the merchants, not petitioners, who seek to recast the factual findings of the courts below in their effort to justify the judgment of liability in this case.

Violence was not "central to the success of the boycott." The merchants state that the Mississippi Supreme Court found that force and violence were "central to the success of the boycott," "contribute[d] substantially to [its] success," were "a substantial and material factor in [its] success," "played an important role in [its] success," and "contributed materially to [its] success." Resp. Br. 1, 5, 17, 25, 29. There are no such "findings." The court made no findings quantifying the role that violence played in the patronage lost by the merchants because, under its erroneous view of the law, there was no need for such analysis. The Mississippi Supreme Court's theory was that the mere "presence" of violence in the community during the time of the boycott sufficed to eliminate all First Amendment protection for *all* the boy-

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[1] The merchants also assert (Resp. Br. 17-21) that even if peaceful boycott activity is protected, the NAACP is liable for all the boycott losses of the merchants because Petitioner Charles Evers, the NAACP's filed secretary in Mississippi, gave two (or three) "threatening" speeches. This argument is dealt with below at pp. 7-10.

cott activities of *all* the petitioners, even absent any proof that the petitioners participated in those acts (App. 23a):

> "If any of these factors—force, violence, or threats—is present, then the boycott is illegal regardless of whether it is primary, secondary, economical, political, social or other. All of these factors are here present, and the boycott was illegally operated . . . ."

This "presence of violence" standard was not, as the merchants suggest, simply an inelegant "paraphrase of a Fifth Circuit opinion" (Resp. Br. 26) or a "failure to use certain words and phrases" (Resp. Br. 27). It was the exact and only ground of the Mississippi Supreme Court's holding.

Elsewhere in its opinion, the Mississippi Supreme Court did cite the chancellor's conclusion that "the volition of many black persons was overcome out of sheer fear." App. 20a. But part of that conclusion plainly relied upon a perception that there was fear, not of violence, but of "social ostracism, vilification, and traduction." And the number of black persons even arguably "overcome" was very small—only four are cited by the merchants. *See* Resp. Br. 39.[2] Similarly, the court's statement that intimidation, coercion, and threats "contributed" to the boycott's "almost complete success" (App.

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[2] The testimony does not support even this insignificant claim. Marjorie Brandon testified only that she heard that those who shopped in white stores would be "dealt with" or "punished." The only type of punishment she referred to was that their names would be called out "so that they would be put on a bad list in the other people's minds in their community." J.A. 219-20. Mrs. E. J. Jennings, who had heard of only one incident of violence involving those who traded in white stores, boycotted simply because she "didn't want no trouble," had heard of boycotts in Detroit, and "didn't want no risk." Although she agreed with counsel's suggestion that "you were afraid that if you didn't observe it something might happen to you," the only such fear she testified to was again the fear of being "embarrassed" and socially ostracized. J.A. 237-42.

24a) is constitutionally inadequate. No one questions that the boycott was successful, in the sense that most black citizens of Claiborne County refused to patronize white stores. The question in this case is whether they did so as a result of protected First Amendment advocacy or as a result of physical violence or the fear of such violence.

The testimony could not have supported any finding that violence and threats of violence were "central" to the boycott's effectiveness. The merchants conceded below that

> "Most of the witnesses testified that they voluntarily went along with the NAACP and their fellow black citizens in honoring and observing the boycott because they wanted the boycott." Brief for Appellees Claiborne Hardware Co. *et al.* at 12 (February 15, 1980).[3]

And, as we have noted (Pet. Br. 33 n.36), the record contains no proof that the few incidents of vandalism described by the chancellor caused even a single one of the victims to forego trade with white stores. The only specific finding made by the chancellor regarding the motivations of any black citizens of Claiborne County was with respect to the cooks employed by the defendant, Mississippi Action for Progress:

> ". . . [T]he only [MAP] cooks called to the witness stand testified that they refused to go into white-owned stores to purchase groceries for the children in the program *for the reason that they were in favor of*

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[3] Respondents acknowledge in their brief that "some" witnesses "testified that they were not afraid," but dismiss this evidence because these witnesses were "mostly the petitioners themselves." Resp. Br. 27, 38. All 106 of the defendants called as witnesses at trial, however, were called *by the merchants*, as adverse witnesses in support of the merchants' own case. Indeed, highly selected excerpts from the testimony of these 106 defendants constitutes virtually the entire case of the merchants on the "fear and violence" issue.

the boycott and wanted to honor it." App. 22b (emphasis in original).[4]

The violence in the record cannot be assumed to have been "boycott-related." The merchants assert that any assault or act of vandalism in Claiborne County after April 1, 1966, must have been boycott-related, because there was no evidence that there was any other reason. Thus, for example, they assert that the Laura Cullins incident was boycott-related because of the absence in the record of "testimony suggesting any other possible reason for the shooting." Resp. Br. 31. The vandalizing of Muriel Cullins' car becomes boycott-related, since "[t]here was no other suggested motive." *Id.* The Gilmore incident was boycott-related because "Gilmore had broken the boycott." Resp. Br. 30. And so on. The merchants even contend that the failure to identify any individual petitioner as having committed any of these acts is "irrelevant." *See* Resp. Br. 31-33. Thus, the merchants argue here, any violent act against any black person who did not observe the boycott must be presumed to be "boycott-related" and therefore the responsibility of all petitioners. This line of argument suffers not only from an absence of logic but also, as we have observed (Pet. Br. 29-33), from the absence of findings to this effect by the chancellor. Absent some such connection, the constitutional rights of petitioners cannot be abridged by the state.

In addition, however, the merchants attempt in their brief to resurrect a number of events *never even mentioned in the opinions below* that have no significance

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[4] For excerpts of this testimony, see J.A. 431-34, 434-37. The chancellor held MAP liable on the theory that it had joined the boycott voluntarily and rejected MAP's claim that its participation had been coerced. App. 22b-23b. The Mississippi Supreme Court reversed as to MAP, accepting MAP's claim of coercion, on the basis of a "stipulation" of counsel *for the merchants* (actually only an offer to stipulate, R. 13853-54) that MAP cooks were afraid to do business with the white merchants. App. 25a-26a.

to this case. Among these "other acts of violence" (Resp. Br. 37) was a spontaneous act by a group of black students at Addison High School in June 1969, shortly after the fatal shooting of Dusty Jackson by Port Gibson police, preventing milk deliveries from Sherifff McKay's delivery man and slashing the tires on his truck. J.A. 354-69. Another was a fire in a white store. Neither of these episodes involved activity directed at black customers of white stores. A third incident involved vandalism to a car owned by Charles Davis, a black customer of white stores, but also one of the *petitioners* whom the merchants have sued for damages! In another, Emerson Davis' car was vandalized, but the vandal was never identified. J.A. 374, 376. The courts below made no mention of any of these incidents.

Some of the merchants' assertions about the record approach the limits of permitted license. One such example is their assertion that Petitioner Charles Evers organized the "Black Hats" as his "enforcers," armed with guns to prevent persons from entering white stores. Resp. Br. 9, 35-37. The chancellor did not find either that this group was organized by Evers or that they were armed while watching stores. App. 19b. It is undisputed in the record that Evers never attended "Deacons" or "Black Hat" meetings, and his testimony that he never even knew the group existed is uncontradicted. J.A. 137, 189-90, 193, 210. The record also establishes that while some Deacons (like some merchants) possessed personal firearms, they carried these weapons in guarding the First Baptist Church during Tuesday night NAACP meetings, after hearing rumors of possible church bombings by white persons. R. 3306-10; J.A. 135, 146-47, 285.[5]

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[5] The only accurate record citation provided by the merchants in support of their claim that the Deacons used weapons to guard stores (Resp. Br. 9, 36) is the testimony of Respondent Hudson that "these particular people . . . wherever they were standing," were armed "one or two different times" in 1968, "but the police stopped it." J.A. 54. Apparently Hudson could not even tell whether these

Charles Evers' speeches were not shown to have had any connection with unlawful activity. Ultimately, the merchants seek to portray Petitioner Evers as the chief villain in the Claiborne County boycott. It is, in fact, Evers' political oratory on the steps of the county courthouse upon which the merchants rely most heavily for their argument that fear and violence were "central to the success" of the boycott.[6] That reliance is misplaced, because it ignores the First Amendment requirement of a finding of some close nexus between the giving of a speech and subsequent unlawful activity within the power of the state to proscribe. In *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969), this Court held that a Ku Klux Klan speech suggesting "revengence" to an audience of hooded and armed Klansmen could not be punished absent a finding that it was "directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action." *See also Hess v. Indiana*, 414 U.S. 105, 108-09 (1973). If the merchants seek by reference to Evers' speeches to show that he incited his listeners to unlawful acts, the argument fails because the courts below never found (and could not have found) that Evers'

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were real guns or not. *See* J.A. 81. Police Chief Porter, who actively observed the day-to-day conduct of the boycott from 1966 to 1969, testified that persons watching stores were not armed as far as he knew. J.A. 112. *See also* J.A. 139 (documentary evidence that Deacons would "give respect to other people on the street").

[6] The merchants also urge, by resort to the doctrine of *respondeat superior*, that even if the remaining 90 petitioners are dismissed out by this Court, the judgment against petitioner NAACP should be affirmed "[t]o the exact extent that Evers was liable." Resp. Br. 18. Evers was not the NAACP's Field Secretary in Mississippi during all the time in question in this case. J.A. 457-58. In any event, however, the general question of when the NAACP may be liable for unlawful acts of its agents or apparent agents is not a question that needs to be resolved in this case, because the court below did not find, and could not have found on this record, that Evers was responsible for the entire boycott or for business losses due to violence.

speeches had any *Brandenburg* effect. If their point is to demonstrate that Evers put the fear of violence into the minds of his listeners, the only observation of the chancellor that could be read as a "finding" on this point is this (App. 37b-38b):

> "Unquestionably, the word 'got around' in [P]ort Gibson and Claiborne County that physical harm, as well as vilification and ostracism, could very well be the lot of any black person observed trading with whites. As a matter of fact, these things were promised by the Field Secretary of the National NAACP, Charles Evers, on at least two occasions, and it is apparent that the black people believed him."

What was "apparent" to the chancellor is not supported by a word of testimony in the record. No black person testified that he or she developed any apprehension of physical violence as a result of Evers' speeches.

It is obvious that the April 21, 1969 speech upon which the merchants have laid such heavy stress could not have been "central to the success of the boycott" that had begun three years earlier, and thus could not justify an award of damage liability for lost patronage in those years.[7] The merchants now argue that an Evers speech given two days previously, though never even mentioned by the courts below, confirms their theories about Evers. They focus on his statements that those who traded with

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[7] The chancellor was wrong in his apparent belief, based solely upon the recollection of Sheriff McKay (J.A. 83, 100-01), that the single objectionable remark of Evers in his April 1969 speech was also employed in another speech three years before. *See* App. 17b-18b & n.2. We believe that independent examination of the record on this point by this Court (*see* Pet. Br. 26 n.28) will clearly reveal the inaccuracy of McKay's recollection. Every other witness, when specifically questioned on the content of the earlier speech, had a different memory. *See, e.g.*, J.A. 43-44 (Respondent Hudson), 110-11 (Police Chief Porter). *See also* Evers' own recollection (J.A. 184-88). The Mississippi Supreme Court failed to place a date on the remark. *See* App. 19a.

white persons "are going to be in trouble," would be subject to "discipline," and "better not be caught up here." *See* Resp. Br. 35. But Evers' allusions to "discipline" in his testimony referred, not to physical violence, but to "a good tongue-lashing and embarrassing them and showing them how backwards they are to do things." J.A. 193-97.[8]

Petitioner Evers' taped and transcribed speech of April 19, 1969, speaks for itself. *See* J.A. 85-100. Fairly read in its entirety, it amounts to no more than an eloquent plea for black persons in Claiborne County to act together, through their use of "ballots and bucks" rather than "bullets," to free themselves from a heritage of discrimination and poverty. The Evers' speeches do not and cannot provide support for the merchants' notion that violence

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[8] The merchants' brief is filled with similar assertions that black persons who traded in white stores heard that they would be "dealt with" or "taken care of," or heard it was the "general opinion in the community" that persons who traded in white stores would be "punished." Resp. Br. 38. The testimony they cite was the vehicle by which vague rumor was allowed to replace proven fact as the basis for the merchants' theory of fear of violence; as the chancellor observed:

> ". . . I know of no other way that we can get these things in the record. If we went directly according to the rules of evidence, that is to say the heresay [sic] rule, I am afraid this record would be cut down to about half of what it is right now." R. 6055.

Thus, the cited testimony is that violators "would be in trouble" (J.A. 412), or "I've heard about boycotts before" (J.A. 237). Similarly vague testimony cited by the merchants appears at J.A. 172, 221, 224-25, 230-34, 259-60, 263-64, 281, 301.

The record is riddled with leading questions by counsel for the merchants about being "dealt with" or "punished" (J.A. 124, 219, 247, 288, 412) directed to defendants who often did not even understand them (*e.g.*, J.A. 224-27, 246-47). For many witnesses, being "dealt with" involved having one's name read out at NAACP meetings so that he or she would "be put on a bad list in the other people's minds." J.A. 219-21.

was "central to the success" of the boycott, and the court below never found that they were.[9]

II. STATE COURTS MAY NOT AWARD DAMAGES FOR LOSSES CAUSED BY PROTECTED FIRST AMENDMENT ACTIVITY.

The merchants argue that even if the damage judgment in this case cannot be sustained on the theory that violence was central to the success of the boycott, the Mississippi courts were free as a matter of the state law of damages to hold petitioners liable for all the merchants' boycott losses. *See* Resp. Br. 17. The merchants' argument is simply wrong in the context of this case. Compensatory damages in tort may not lawfully be assessed for the results of protected First Amendment advocacy.[10]

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[9] In their effort to make it appear that the Port Gibson boycott was conceived in violence, the merchants place heavy reliance upon Petitioner Evers' 1971 autobiography. While excerpts from that autobiography were introduced at the trial, neither court below ever mentioned the book or the excerpts. Although the merchants assert a paragraph in that book to be a "very candid account of the boycott" (Resp. Br. 4), it is in fact a description of events in *Natchez*, Mississippi (some time before the Port Gibson boycott). J.A. 200-01. For Evers' actual account of the Port Gibson boycott, see C. EVERS, EVERS 176-81 (1971).

The merchants' efforts at trial to convert references in Evers' book about "disciplin[ing] our own people" into trial testimony that Evers engaged in unlawful activity in Port Gibson (or anywhere else) were completely unsuccessful. Evers testified that he never urged physical violence against nonparticipants in the boycott. J.A. 195-97, 201-07.

[10] The merchants also argue that "[a] state court is not constitutionally required to limit the *penalties* it imposes for unprotected conduct to the actual amount of the damage thereby occasioned." Resp. Br. 17 (emphasis supplied). That is a constitutional question not before this Court. As the merchants acknowledge (Resp. Br. 5, 9), the judgment in this case does not purport to be an award of liability in punitive damages for unlawful conduct; it purports to be an award purely "compensatory" in nature for all losses that resulted "from the boycott." App. 35a. *Ramsey v. United Mine*

The merchants argue that the decisions of this Court limiting liability to the effects of unlawful conduct are inapplicable because they are not First Amendment cases. Yet the actions immunized from Sherman Act liability in *United Mine Workers v. Pennington*, 381 U.S. 657, 671-72 (1965), were protected from liability in part because they implicated the First Amendment's right to petition governmental officials for redress of grievances. *See Eastern Railroad Presidents Cnoference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-38 (1961). In any case, if this Court requires state courts to limit tort liability to the actual results of violence by unions on the picket line in order to avoid "arguable" conflict with federal labor policies,[11] surely no less stringent rule applies to

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Workers, 401 U.S. 302 (1971), is thus irrelevant to this case. The fact that Congress has seen fit to impose treble damages for violations of the federal antitrust laws hardly means that Mississippi courts can constitutionally award compensatory damages for the effects of First Amendment advocacy, especially where such advocacy was found to be exempt from state antitrust laws because of its "political goals." App. 28a.

[11] *See United Mine Workers v. Gibbs*, 383 U.S. 715 729-35 (1966); *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). In *Garmon*, holding that state courts were powerless to award tort damages for conduct "arguably" protected or prohibited by federal labor law, this Court specifically distinguished its prior decisions permitting recovery in tort for damages "directly and proximately caused" *solely* by violence. *Id.* at 248 n.6.

The merchants note that *Mead v. Retail Clerks Local 839*, 523 F.2d 1371 (9th Cir. 1975), applied *Gibbs*, *supra*, to permit recovery under Section 303 of the Labor Management Relations Act for all business losses suffered by the plaintiff where unlawful secondary pressure "materially contributed" to the injury. Resp. Br. 16. While no such finding with respect to unlawful conduct was made in this case, the Ninth Circuit's *Mead* doctrine is inapplicable in any case. First, it was an interpretation of a federal statute informed by "Congress' object and purpose" in that statute, 523 F.2d at 1376, which is not applicable here. Second, it permitted recovery only because the consequences of primary and secondary picketing "are not separable, and the damages cannot be apportioned." *Id.* at 1378-79. This finding of inseparability was premised upon the fact that under

state tort judgments awarding damages for the results of nonviolent political boycott activity concededly entitled to First Amendment protection. State restrictions upon speech, petition, and assembly—whether by statute, by injunction, by tort liability, or by any other form of state action under the Fourteenth Amendment—may be sustained only by precisely drawn, least restrictive means of serving compelling state interests. *E.g.*, *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980).

The merchants actually concede the application of these principles to the injunction granted below. Although they previously insisted that the injunction was moot, they now "have no objection" to a modification of the injunction that would enjoin only "acts of violence and . . . threats of physical violence." Resp. Br. 48. But they assert that "a state court judgment granting compensatory damages in a civil case for actual economic losses does not pose the same threat to First Amendment values as a prior restraint or as a criminal conviction." Resp. Br. 9. In *New York Times Co. v. Sullivan*, 376 U.S. 254, 277-78 (1964), a civil damage suit for libel, this Court rejected just such an argument, noting that the chill to future exercise of First Amendment rights created by the prospect of substantial damage judgments may be even greater than that posed by the fear of criminal punishment. As Respondent Dobbs admitted, this lawsuit was filed precisely in order "to keep another boycott from ever happening again in Port Gibson." J.A. 421. And, according to the testimony of the national director of branches and supervisor of the field staff for Petitioner NAACP, Mississippi membership in the NAACP in fact plunged from 15,223 to 8,276 during the year following the filing of this well-publicized suit—a drop attributed directly to the potential liability threatened by this action. J.A. 443.

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the peculiarities of federal labor law *the very same picketing activity* had both lawful (primary) and unlawful (secondary) objects. *Id.* at 1378.

III. PETITIONERS HAVE NO VICARIOUS LIABILITY THROUGH PURPORTED "ACQUIESCENCE" IN UNLAWFUL ACTS.

As noted in our opening brief (Pet. Br. 34-36), there is no evidence in the record with respect to the vast majority of the 92 petitioners that they intended anything other than to exercise their constitutional and civil rights by joining in peaceful forms of First Amendment speech, petition, and assembly and by withholding their patronage from the merchants. The merchants apparently acknowledge that the court below failed to find that any of these Petitioners had the specific intent to further the boycott by unlawful means.[12] They assert instead that requiring more than "general intent"—whatever that may mean—would serve to "unconstitutionalize the traditional rules of evidence and procedure . . . in the state courts." Resp. Br. 15. This argument is not only inaccurate but beside the point. The specific intent requirement, which has been well established for over 20 years, does not regulate rules of evidence or procedure in state courts. It does, in a sense, "constitutionalize" the substantive showing of participation in unlawful acts necessary to establish liability in political association cases, by demanding more than a showing of mere membership in a common political group. But this is no more than a rule of constitutional law developed by this Court to safeguard rights of political as-

[12] The merchants do, however, mislead this Court by their suggestion that the Mississippi Supreme Court engaged in "a thorough review of the record" as to the intent and level of participation of the other defendants below. Resp. Br. 12, 39-40. The list of defendants dismissed out by the Mississippi Supreme Court was taken verbatim from petitioners' brief below, which identified, by way of example, a number of defendants as to whom there was absolutely no mention in the record, as to whom the only evidence was their individual refusal to patronize the merchants' stores, or as to whom the only evidence was membership in the NAACP or attendance at NAACP meetings. *Compare* Brief of Appellants NAACP and All Individual Appellants 22-23 & nn.25-27 (August 29, 1979), *with* App. 26a.

sociation. In cases involving associations of persons engaged in protected First Amendment activity with others arguably engaged in illegal conduct, liability may not be established by proof of common affiliation alone, because to do so would impose unacceptable obstacles to the exercise of speech and associational rights. As Justice Harlan observed in *Noto v. United States*, 367 U.S. 290, 299-300 (1961):

> ". . . this element of the membership crime, like its others, must be judged *strictissimi juris*, for otherwise there is a danger that one in sympathy with the legitimate aims of . . . an organization, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share."

The merchants' argument that all these petitioners were liable because they knew of violence, "acquiesced" in it, and failed to "disassociate themselves from the threats and violence or perhaps even to try to stop them" (Resp. Br. 12, 39), cannot be squared with the commitment to freedom of association made by this Court in *Noto*. Although many petitioners had no knowledge of the existence of or motive for the sporadic acts of violence in Port Gibson (Pet. Br. 28), mere knowledge of unlawful activity would not satisfy the constitutional standard in any event. *Keyishian v. Board of Regents*, 385 U.S. 589, 606-07 (1967); *Elfbrandt v. Russell*, 384 U.S. 11, 16 (1966); *see Healy v. James*, 408 U.S. 169, 186 (1972). The rule advanced by the merchants would require anyone engaging in a civil rights boycott to stop boycotting (to begin making purchases) immediately upon learning (or being placed on notice) of any incidents of unlawful conduct by others in the same county. The decisions of this Court support no such rule, and it should be rejected here.

CONCLUSION

For the reasons stated above and in our opening brief, the judgment of the Mississippi Supreme Court should be reversed.

Respectfully submitted,

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Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

MOTION OF AMERICAN JEWISH CONGRESS FOR LEAVE TO FILE BRIEF AND BRIEF AMICUS CURIAE

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MOTION OF AMERICAN JEWISH CONGRESS FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The American Jewish Congress respectfully moves for leave to file the attached brief *amicus curiae*. Counsel for the Petitioners have consented to the filing of this brief. Counsel for Respondents have not.

The American Jewish Congress, a national organization of American Jews, was established in 1917, in part to protect the religious, civil, political and economic rights of Jews and to promote the principles of democracy. Since its inception, the American Jewish Congress has regarded the vigorous assertion of the views of its members on national issues as a moral obligation. To promote those views, the AJC has employed picketing and, where appropriate, boycotting, both forms of expression improperly prohibited and punished by the decision below.

For example, early in its history this organization organized the 1930s boycott against Nazi Germany.[1] Since then, the AJC has been among the organizations supporting boycotts of farm and textile products in connection with labor disputes. Most recently, we have supported a boycott of convention facilities in states that have failed to ratify the proposed Equal Rights Amendment. *See Missouri* v. *National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980).

Such politically motivated boycotts can be successful only if a large number of persons participate. In the course of gathering such support, a boycotting organization can make clear to all of its members their obligation to refrain from illegal conduct. But our own experience tells us that even an organization historically committed to exclusively peaceful activity in pursuit of its goals may on occasion find that third parties who support the same goals act with less restraint.[2] We believe that it is not consistent with the First Amendment, or with the long tradition of political protest in the United States, to punish or prohibit legitimate political activity, including boycotts, simply because some supporters behave illegally or improperly.

Yet the court below did just this. It held a boycotting organization and its active members liable for all the economic consequences of the boycott itself and enjoined all future boycott-related speech and conduct, without properly distinguishing between the lawful and supposedly unlawful activities involved and without regard to the lack of participation of the sponsoring organization in any improper act. We believe that, if such a result is allowed on the basis of the evidence in this case, organized political activity of a kind long recognized as having constitutional protection would effectively be prohibited.

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1 *See* M.L. Urofsky, *A Voice that Spoke for Justice* 264-67 (1981).

2 Urofsky, *supra*, at 267, quotes Judge Julian Mack as saying of a meeting during the Nazi boycott: "The easiest thing in the world could have been to arouse that audience . . . to murderous rage."

We thus believe that affirmance by this Court of the decision of the Mississippi Supreme Court in this case would place an unreasonable restraint on legitimate political activity of the sort carried out by the AJC. We believe further that our years of experience as an organization which not only engages in vigorous activity on public issues but also participates in many legal proceedings involving constitutional freedoms enable us to make a significant contribution to this Court's consideration of this case. Accordingly, the American Jewish Congress moves for leave to file the attached brief *amicus curiae*.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-202

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,

Petitioners,

—v.—

CLAIBORNE HARDWARE COMPANY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSISSIPPI

BRIEF AMICUS CURIAE OF THE AMERICAN JEWISH CONGRESS

INTEREST OF AMICUS

The interest of *amicus* appears in the accompanying motion.

STATEMENT

As the brief of Petitioners has discussed in detail, this case involves an economic boycott, started in 1966 by black citizens of Claiborne County, Mississippi, in support of their demands for basic political and civil rights (*e.g.*, hiring of black employees by local merchants; desegregation of public schools; integration of the police force; compliance with the Civil Rights Act of 1964; cessation of the practice of local police addressing adult blacks as "boy", "shine", and so forth; allowing blacks

to serve on juries; etc.). The courts below, consistent with the pattern of Mississippi officials with respect to civil rights claims during the 1960s,[1] found that Petitioners' boycott was a "civil conspiracy," issued an injunction prohibiting future speech and conduct in support of the boycott, and held the participants in the boycott liable for all resulting business losses.[2] The Mississippi courts' justification for this result was that a number of "unlawful activities," including some violence but consisting in large part of constitutionally protected speech, took place during the three-year period of the boycott. According to the Mississippi courts, these "unlawful" activities could be ascribed to the Petitioners as a whole so as to render the entire boycott illegal under the State's common law of conspiracy. *NAACP* v. *Claiborne Hardware Co.*, 393 So. 2d 1290, 1300-01 (Miss. 1981).

The central flaw in the decisions below is the Mississippi courts' failure to distinguish between lawful and unlawful conduct, between violence which is planned by protest organizers and that carried out independently by a few sympathizers, and between innocent and culpable individuals. These failures so taint all of the conclusions reached below, as well as the findings made by the trial court, that it is impossible to

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1 A valuable description of the resistence by state and county officials to desegregation and other attempts to obtain civil rights for Mississippi's black citizens is contained in this Court's opinion in *United States* v. *Barnett*, 376 U.S. 681 (1964) (describing then Governor Barnett's implementation of "the state's policy of massive resistance" to this Court's orders), and in L. Friedman (ed.), Southern Justice 13-42, 80-111, 136-55 (1965) (describing the enactment and attempted enforcement of Mississippi's "massive resistance" statutes and ordinances, and the use of those and other laws to harass civil rights workers).

2 We do not discuss in this *amicus* brief the question whether the validity of the injunction, as distinguished from the award of damages, is properly before this Court. Because our review of the record suggests to us that both issues are properly before this Court, this brief is addressed to both the damage award and the injunction. We note, however, that our argument would apply even if only the damage award were at issue.

determine from the opinions below what result would have been reached had the courts applied the proper legal standards.

The blunderbuss approach of the courts below is well-illustrated by their conclusion that the boycott was a "conspiracy" because at the time of the boycott there was (i) "social ostracism," "vilification," "traduction," and other such activity obviously protected by the First Amendment, but described by the Mississippi courts with various pejorative adjectives; (ii) an "atmosphere" of fear; and (iii) acts of violence by a small number of individuals.[3] It is impossible to be certain from the opinions of the courts below the extent to which the first two items, which should not have been considered, affected their findings, but it is apparent that they relied on these improper considerations to a significant degree.

Moreover, it is not clear why the Mississippi courts thought the NAACP or most of the other defendants could be held liable for the limited violence that did occur. There was no

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3 The Mississippi Supreme Court noted, but did not rely on, the alleged "secondary" nature of the Port Gibson boycott. (The trial judge below had considered the claimed "secondary" nature of the boycott as an additional factor in concluding that the boycott was unlawful). The boycott in question, however, was not secondary. A major part of the Petitioners' demands involved employment discrimination and fair customer treatment at the stores being boycotted. Moreover, the record is clear that a number of the merchants boycotted held public office and were in a position to address the governmental discrimination that formed a partial basis of the protest. Indeed, a number of the merchants had been appointed by the Port Gibson city government to represent it in negotiations with the NAACP. The targets of the boycott, in short, were not innocent and unintended victims; they were the town fathers and a central part of the governmental and commercial power structure of Port Gibson.

In any event, even to the extent the boycott might properly be characterized as secondary, that fact is irrelevant given the political, noncommercial purpose it had. *See Missouri* v. *National Organization for Women*, 620 F.2d 1301, 1304 n.4, 1312 n.12 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980); *cf. Eastern Railroad Presidents Conf.* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127, 143-44 (1961). In the circumstances of this case, the Port Gibson boycotters had the right to follow the subject matter of their dispute. *See Bakery & Pastry Drivers & Helpers Local 802* v. *Wohl*, 315 U.S. 769, 775 (1942).

evidence that the NAACP or other boycott organizers encouraged or authorized such acts, that there was an agreement among Petitioners to engage in violence, or that the Respondent merchants lost any identifiable business as a result of such acts. Indeed, it is noteworthy that the "violence" upon which the Mississippi courts purport to rest their decision was so isolated that the chief of police, who was hardly sympathetic to the boycotters, arrested no more than three individuals for boycott-related activities, and the county sheriff, who was no more sympathetic, made only five such arrests in three years.

To make matters worse, the courts below gave no consideration to the individual culpability of the 130 defendants. The trial judge simply found against all 130 properly named defendants, with a single exception. The Supreme Court of Mississippi did set aside the judgment as against nearly one-third of those defendants for lack of *any* evidence at all supporting their liability. But the Mississippi Supreme Court gave no indication of the basis upon which all 92 of the other defendants were held jointly and severally liable.

A further defect is the extent to which the Mississippi courts' negative views of the merits of the boycott affected their conclusions. For example, the trial court judge commented that the black population of Claiborne County was sufficient for the NAACP to obtain its ends "without the necessity of rancor, ill-will, threats, violence, or the visitation of economic ruin on the white merchants of the area";[4] that the boycott intensified after the assassination of Martin Luther King, Jr.,

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4 A more reliable portrayal of the civil rights situation in Mississippi in the years preceding the boycott is contained in the 1963 report of the United States Civil Rights Commission describing the situation in Mississippi and elsewhere in the South at that time:

> "Citizens of the United States have been shot, set upon by vicious dogs, beaten and otherwise terrorized because they sought to vote. Since October, students have been fired upon, ministers have been assaulted and the home of the Vice Chairman of the State Advisory Committee to this Commission has been bombed. Another member and his wife were jailed on trumped-up charges after their home had been defiled. Even children, at the brink of starvation, have

despite the fact that "it is difficult for this court to understand how the white people of Claiborne County, Mississippi, could be deemed responsible in any sense for a barbaric murder in Memphis, Tennessee"; and that the boycotters had branded the merchants "automatically and conclusively guilty of discrimination against the defendants and all black citizens of Claiborne County" by virtue of their being white.

The Mississippi Supreme Court expressed similar sentiments and attempted to belittle the need for a boycott, arguing that "[w]ith the momentous weight of civil rights progress . . . , by the time the boycott here involved had begun the blacks had obtained overpowering authority in the ballot box." 302 So.2d at 1295.[5]

A fair reading of the opinions below makes it clear that, rather than respecting the First Amendment rights of Petitioners, the Mississippi courts found the boycott personally objectionable in various respects and allowed that to color their findings and conclusions throughout.

Neither decision below is entitled to any deference here, as both are tainted by a failure to focus upon the proper factual issue—whether each defendant was a member of a "conspiracy" which chose violence or other unlawful acts as a means of promoting the boycott. A finding of "conspiracy" by a court which cannot distinguish protected First Amendment activity from unlawful acts is worthless. Indeed, the frightening result of the Mississippi Supreme Court's decision lies in its holding that some vague degree of disorder, attributed with no

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been deprived of assistance by the callous and discriminatory acts of Mississippi officials administering Federal funds." April 1963 Civil Rights Commission Interim Report, *reprinted in* L. Friedman (ed.), Southern Justice at 234 (1965).

5 History scarcely supports such a claim. Indeed, in a case decided just the year before the start of the boycott, this Court took note of the elaborate and largely successful efforts of the State of Mississippi to curb voting by blacks. *United States* v. *Mississippi*, 380 U.S. 128 (1965).

specificity to the vast number of Petitioners, can justify a broad forfeiture of their First Amendment liberties. That holding, we submit, must be reversed.

SUMMARY OF ARGUMENT

1. *The Port Gibson Boycott Is Protected by the First Amendment.* Petitioners' boycott, as well as the speech-related activities engaged in by Petitioners to further the boycott, are protected by the First Amendment to the Constitution. Politically motivated economic boycotts have a long and honored history in our nation. Moreover, the decisions of this Court have consistently endorsed the right of citizens to organize and induce others to participate in such boycotts. That right has thus been implicitly recognized in a series of cases involving the picketing and patrolling of business enterprises. *See, e.g., Thornhill* v. *Alabama,* 310 U.S. 88, 99, 104-05 (1940). Although this Court has not directly addressed the issue, a number of circuit court decisions have applied these principles to civil rights boycotts. *E.g., Missouri* v. *National Organization for Women, Inc.,* 620 F.2d 1301 (8th Cir.), *cert. denied,* 449 U.S. 842 (1980); *Henry* v. *First National Bank of Clarksdale,* 595 F.2d 291 (5th Cir. 1979), *cert. denied,* 444 U.S. 1074 (1980) (involving the present boycott).

There is no doubt that the vast bulk of the activities designed to further the Port Gibson boycott, including marching, oratory, and pamphleteering, is similarly guaranteed by the First Amendment. Each such activity was part of a protest of racial discrimination and segregation in the State of Mississippi in the 1960s. Each constituted "an exercise of . . . basic constitutional rights" which have "always rested on the highest rung of the hierarchy of First Amendment values. . . ." *Carey* v. *Brown,* 447 U.S. 455, 466-67 (1980). The holding of the Mississippi Supreme Court that some of the expression in question amounted to "intimidation, threats, . . . vilification, and traduction" and caused "social ostracism" and was thereby not entitled to the protection of the First Amendment

was plain error. Those types of speech have repeatedly been held protected by decisions of this Court. *See, e.g., Old Dominion Branch No. 496* v. *Austin,* 418 U.S. 264 (1974); *Organization for a Better Austin* v. *Keefe,* 402 U.S. 415 (1971); *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964).

Moreover, the mere presence of a handful of acts of violence in Claiborne County, Mississippi during the three-year-long boycott does not render the boycott itself, let alone the peaceful protest activities engaged in by the Petitioners in furtherance of the boycott, illegal or remove from them the protection of the First Amendment. The reliance of the Mississippi Supreme Court on the decision of this Court in *Milk Wagon Drivers' Union Local 753* v. *Meadowmoor Dairies, Inc.,* 312 U.S. 287 (1941), to reach a contrary conclusion was erroneous. *Meadowmoor* is a forty-year old labor case decided prior to the development of modern-day First Amendment law and is of doubtful applicability to the present civil rights issues. But in any case, the decision in *Meadowmoor* applied only to pervasive and inevitable violence, not to the "social ostracism, vilification and traduction" condemned by the Mississippi Supreme Court. Indeed, it is noteworthy that not a single case has come before this Court since *Meadowmoor* presenting circumstances of violence so enmeshed with peaceful boycott activities as to warrant an injunction of that activity in reliance on *Meadowmoor*; and it is plain that this is not such a case.

2. *The Boycott Was Not a "Civil Conspiracy".* The decision below found liability as to all Petitioners on a theory of civil conspiracy. That finding is wrong both as a matter of conspiracy law and because, on the facts of this case, it is repugnant to the First Amendment.

It is clear that a conspiracy cannot exist unless there is an agreement to accomplish an *unlawful* purpose or an agreement to accomplish a lawful purpose by *unlawful* means. *See Iannelli* v. *United States,* 420 U.S. 770, 777 (1975). A conspiracy cannot be demonstrated to have existed in this case by the mere fact that the NAACP and other Petitioners agreed to boycott

white merchants. Again, that agreement is protected by the First Amendment.

Moreover, even if a conspiracy could be demonstrated by virtue of the fact that during the years of the boycott a handful of violent incidents took place, the record reflects no evidence whatsoever that the Petitioner NAACP or all of its members who participated in the boycott agreed to accomplish an illegal objective or to employ violence or other illegal means in furtherance of the boycott. Yet such evidence is required before these Petitioners could be held to have conspired. *Kline* v. *Coldwell, Banker & Co.*, 508 F.2d 226 (9th Cir. 1974), *cert. denied*, 421 U.S. 963 (1975).

In sum, the decision below fails to distinguish between legal and illegal means of furthering the boycott, between actions planned by the organizers to further the boycott and those engaged in independently by certain individuals, and between culpable and nonculpable persons. Yet, such distinctions are required where First Amendment rights are concerned. *See Citizens Against Rent Control/Coalition for Fair Housing* v. *City of Berkeley*, 50 U.S.L.W. 4071, 4072 (Dec. 14, 1981); *Selzer* v. *Fleisher*, 629 F.2d 809, 813 (2d Cir. 1980).

3. *The Mississippi Courts Imposed Unconstitutional Remedies.* This Court has held repeatedly that restrictions on First Amendment freedoms must be narrowly drawn. Both the injunction and the damage award at issue here violate that constitutional admonition. *See, e.g., Consolidated Edison Co.* v. *Public Serv. Comm'n*, 447 U.S. 530, 540 (1980); *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 729-35 (1966).

The permanent injunction upheld by the Mississippi Supreme Court prohibits all further boycott-related activity, including peaceful marching, picketing, speechmaking and pamphleteering. Significantly, the constitutional infirmity of the sweeping injunction here at issue was pointed out by the Fifth Circuit Court of Appeals in a decision largely ignored by the Mississippi Supreme Court. *Henry* v. *First National Bank of*

Clarksdale, 595 F.2d 291 (1979), *cert. denied,* 444 U.S. 1074 (1980). Moreover, insofar as the injunction prohibits the Petitioners from "persuading, soliciting or advising . . . any person to withdraw his or her patronage" from the Respondents, it constitutes a bald and inexcusable regulation of the content of Petitioners' speech. *See Police Dept. of Chicago* v. *Mosley,* 408 U.S. 92, 95 (1972).

The decisions below are also constitutionally infirm with respect to the damages awarded. Respondents here are entitled to recover for damages caused by violent activity that actually resulted in injury to them, but they cannot recover losses that resulted from constitutionally protected activity or as against persons who bear no responsibility for unlawful behavior. *See United Mine Workers* v. *Gibbs, supra,* at 729. A contrary result by this Court would have a profoundly chilling effect upon political boycotts, because the risk of a crippling award of damages would increase with the success of each lawful boycott.

* * *

For all these reasons, the decision of the Supreme Court of Mississippi is wrong.

ARGUMENT

I.

THE PORT GIBSON BOYCOTT IS PROTECTED BY THE FIRST AMENDMENT

(A) Political Boycotts Are Protected by the First Amendment

As this Court noted only this month, "the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process." *Citizens Against Rent Control/Coalition for Fair Housing* v. *City of Berkeley,* 50 U.S.L.W. 4071, 4072 (Dec. 14, 1981). For this reason, politically motivated economic boycotts have a long and honored history in America. From the colonial

boycott protesting the Stamp and Townsend Acts to that called recently by our federal government to protest the Soviet invasion of Afghanistan, the established place in our political process of the boycott as protest has consistently been recognized. Concomitantly, this Court has held that the right of citizens to organize and induce a business boycott is guaranteed by the First Amendment as an exercise of the rights of free speech, assembly and petition.

For example, in *Thornhill* v. *Alabama,* 310 U.S. 88 (1940), the Court held that peaceful picketing—the most common form of inducement not to patronize and an activity intended in virtually every case to accomplish a "boycott"—is entitled to First Amendment protection. The Court there recognized that the purpose and natural consequence of picketing was "to induce . . . customers not to patronize the employer." 310 U.S. at 99. This Court expressly held, however, that the employer's economic interest was not of sufficient weight to allow the State of Alabama to interfere with Thornhill's First Amendment right to urge others to withhold their patronage from his employer. 310 U.S. at 104-05.

Significantly, a civil rights boycott the circumstances of which were virtually identical to the Port Gibson boycott was afforded First Amendmemt protection by the Fifth Circuit Court of Appeals in *Machesky* v. *Bizzell,* 414 F.2d 283 (5th Cir. 1969). There, as here, the boycotters sought the elimination of segregation and employment discrimination. There, as here, the boycotters engaged in picketing to dramatize and effectuate their end. And, there, as here, sporadic and isolated acts of violence and coercion occurred and were identified with members of the organization urging the boycott. The Fifth Circuit concluded that the state court injunction effectively terminating the boycott was unconstitutionally broad "in that it lumps the protected with the unprotected" and improperly enjoined "loitering or congregating . . . *to induce, persuade, or coerce any person or persons not to trade or to do other business* with [the] . . . Complainants." 414 F.2d at 291 (emphasis supplied).

Indeed, the Fifth Circuit applied these principles to the Port Gibson boycott and strongly suggested that it was protected:

> There is no suggestion that the . . . defendants were in competition with white businesses. . . . On the contrary, the boycott grew out of a racial dispute with the white merchants and the city government. . . . This differentiates this case from a boycott organized for economic ends, for speech to protest racial discrimination is essential political speech lying at the core of the First Amendment. *Henry* v. *First National Bank of Clarksdale,* 595 F.2d 291, 303 (5th Cir. 1979), *cert. denied,* 444 U.S. 1074 (1980).

More recently, the First Amendment implications of politically-motivated boycotts were addressed by the Eighth Circuit Court of Appeals in *Missouri* v. *National Organization For Women,* 620 F.2d 1301 (8th Cir.), *cert. denied,* 449 U.S. 842 (1980). That Court held that a noncommercial, politically motivated boycott is "privileged on the basis of the First Amendment right to petition." 620 F.2d at 1319. The critical consideration advanced by the Eighth Circuit in holding the boycott privileged was the fact that the "goal and sole purpose of NOW's economic boycott campaign is the ratification of the ERA." 620 F.2d at 1302. The intended intermediate goal of inflicting economic injury on Missouri's convention trade was viewed as incidental to this primary—and constitutionally protected—political purpose of the boycott. 620 F.2d at 1304 n.4, 1312 n.12.

Relying in large measure on this Court's decisions in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), and *California Motor Transport Co.* v. *Trucking Unlimited,* 404 U.S. 508 (1972), the Eighth Circuit held that the organizers of and participants in a boycott to protest Missouri's failure to ratify the proposed Equal Rights Amendment could not be held liable for damages on antitrust or tort theories unless it were shown that the boycott was not

politically motivated but rather was a "sham" designed solely to cause economic injury to the businesses boycotted. 620 F.2d at 1316-19. *See also Sierra Club* v. *Butz,* 349 F.Supp. 934 (N.D. Cal. 1972).

In sum, as this Court observed in *Carey* v. *Brown,* 447 U.S. 455 (1980), boycotts which have "important economic, social, and political" purposes constitute "an exercise of . . . basic constitutional rights" which have "always rested on the highest rung of the hierarchy of First Amendment values . . . ." 447 U.S. at 466-67.

(B) Petitioners' Peaceful Activities in Support of the Boycott Are Entitled to First Amendment Protection

The Mississippi Supreme Court described the bulk of the Petitioners' boycott-related activity as involving "the marches and the pep speeches usually a part of such undertaking . . . the pickets with their signs; the group of men almost fifty in number who were specially conspicuous because they wore black headwear and perhaps other black clothing, so that they would be easily distinguishable . . . the 'Black Times' publications, . . . wherein the names of those being boycotted periodically appeared as well as names of some observed breaking the boycott." 393 So. 2d at 1297. The Court also noted the presence of "watchers," "guards" or "enforcers," a group of individuals whose "assignment" was to make others aware of the boycott and the fact that their participation was desired. *Id.* These principal boycott activities are forms of expression undoubtedly protected by the First Amendment. *See, e.g., Carey* v. *Brown,* 447 U.S. 455, 466-67 (1980) (peaceful marching); *First National Bank of Boston* v. *Bellotti,* 435 U.S. 765, 776-77 (1978) (petitioning the government); *Old Dominion Branch No. 496* v. *Austin,* 418 U.S. 264, 279-87 (publishing names of nonunion "scabs").

As noted earlier, the Mississippi Supreme Court, quoting extensively from the trial court opinion, took issue with, and partially based the relief it afforded on, the presence of what it

called "violence," made up in large measure of "social ostracism, vilification and traduction." 393 So. 2d at 1300. But that some of the speech used during the course of the Port Gibson boycott amounted to "social ostracism, vilification and traduction" does not remove it from First Amendment protection. And, being legal and privileged in itself, it can hardly be a valid ground for finding the boycott or any part of it unlawful.

Thus, speech which "invite[s] dispute," "creates dissatisfaction," or even "stirs people to anger" is nevertheless "protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Terminiello* v. *Chicago,* 337 U.S. 1, 4-5 (1949). In fact, this Court has specifically held that the First Amendment protects even "vehement, caustic, and sometimes unpleasantly sharp attacks" on others. *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 270 (1964). Pejorative terms, epithets, and even ridicule are entitled to the full shield of the First Amendment. *Old Dominion Branch No. 496* v. *Austin,* 418 U.S. 264 (1974); *see Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323, 339 (1974).

Similarly, the publication of the names of those who did not cooperate with the boycott, the "vilification" and "traduction" of such persons by those picketing white stores, and any resulting "social ostracism," are entirely protected by the First Amendment. *See, e.g., Old Dominion Branch No. 496, supra,* 418 U.S. at 279-87 (language that is "vituperative, abusive, and inexact" is entitled to First Amendment protection); *see also Watts* v. *United States,* 394 U.S. 705, 708 (1969).

Nor does the fact that petitioners' nonviolent expressions "intimidate[d]" or had coercive effect deny them First Amendment protection. As this Court said in *Organization for a Better Austin* v. *Keefe,* 402 U.S. 415 (1971):

> The claim that the expressions were intended to exercise a coercive impact on respondents does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondents' conduct by

> their activities; this is not fundamentally different from the function of a newspaper. . . . [S]o long as the means are peaceful, the communication need not meet standards of acceptability. 402 U.S. at 419.

See also Gooding v. *Wilson,* 405 U.S. 518, 520 n.1 (1972) (First Amendment protects statements including "You son of a bitch, if you ever put your hands on me again, I'll cut you all to pieces"); *Street* v. *New York,* 394 U.S. 576, 592 (1969) (speech cannot be prohibited because audience offended or angered).

* * *

Thus, the Port Gibson boycott, the peaceful picketing, speechmaking, marching and pamphleteering that attended it, and even the "intimidation, . . . social ostracism, vilification and traduction" that may have occurred over the years of the boycott, were activities that enjoy the protection of the First Amendment. As such, they do not form, even taken together, a constitutionally permissible basis for the damages and injunctive relief imposed by the Supreme Court of Mississippi.

(C) The Decision of this Court in *Milk Wagon Drivers' Union Local 753* v. *Meadowmoor Dairies, Inc.* Does Not Support the Result Below

The First Amendment to the Constitution does not provide an absolute and unbridled right of speech. And, of course, violence itself is entirely unprotected conduct. As a result, this Court has held that there may be circumstances of pervasive violence under which First Amendment freedoms to picket and boycott might be required to yield to the police power of the states. *Milk Wagon Drivers' Union Local 753* v. *Meadowmoor Dairies, Inc.,* 312 U.S. 287 (1941).

The Mississippi courts relied almost exclusively on *Meadowmoor* to conclude that the Port Gibson boycott was unlawful in its entirety. It is noteworthy that the *Meadowmoor* case was decided forty years ago, well before the development of the

First Amendment principles relied upon here, and related to a labor dispute, not political expression.[6] But, even assuming that *Meadowmoor* has any vitality in a civil rights context, the case does not support the decision below.

First, as discussed previously, the Mississippi Courts thought that under *Meadowmoor* "social ostracism, vilification, and traduction" were unlawful and without First Amendment protection. That, of course, is simply wrong. *Meadowmoor* applied to pervasive and inevitable violence, and to violence only.

Second, in *Meadowmoor* this Court found picketing beyond First Amendment protection because the entire union activity was "enmeshed" with violence. 312 U.S. 291-92. Thus, *Meadowmoor* involved more than 50 instances of window smashing, explosive and stench bombs that caused substantial injury to property, wrecking of trucks and serious injury of a driver, arson and near total ruin of a store and several trucks, and severe beatings of both employers and employees. And even in *Meadowmoor,* this Court made it clear that the judicial balance in future picketing cases must be weighted toward First Amendment freedoms and that the guarantee of free speech must be given "generous scope." 312 U.S. at 296. Specifically, the Court said that the "[r]ight to free speech in the future cannot be forfeited because of dissociated acts of past violence." *Id.*

Nor have this Court's decisions permitted a forfeiture of freedom of expression in circumstances less compelling than those presented in *Meadowmoor.* It is worth emphasizing that *not a single case* has come to this Court in the past forty years presenting circumstances of violence so "enmeshed" with

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6 Political expression rests on the "highest rung of the hierarchy of First Amendment values." *Carey* v. *Brown,* 447 U.S. 455, 466-67 (1980). The labor picketing involved in *Meadowmoor,* while protected by the First Amendment, is subject to greater governmental restriction. *See* T. Emerson, *The System of Freedom of Expression,* 444-49 (1970), cited in *Carey* v. *Brown, supra,* 447 U.S. at 466.

peaceful activity as to remove entirely First Amendment protection from peaceful picketing and boycott activity. Rather, from the day *Meadowmoor* was decided, it has been distinguished by this Court.[7] Indeed, this Court has made clear that the *Meadowmoor* cannot be applied unless there has been a finding that violence is an inseparable and inevitable part of the protest activity. *See Youngdahl* v. *Rainfair, Inc.*, 355 U.S. 131, 139 (1957); *Cafeteria Employees Union Local 302* v. *Angelos,* 320 U.S. 293, 296 (1943). The Mississippi courts made no such findings (nor could such findings have been made) in the present case and held instead that the simple "presen[ce]" of contemporaneous, but sporadic, violence over a period of years rendered the Port Gibson boycott illegal. That holding is plainly incorrect.

* * *

In sum, while the sporadic acts of violence that may have been "present" in Port Gibson, Mississippi during the years of the NAACP boycott were themselves punishable both civilly and criminally, this Court's decisions have made it perfectly clear that the boycott itself—including any attendant "social ostracism, vilification, and traduction"—was protected by the First Amendment.

II.

THE PETITIONERS CANNOT BE HELD LIABLE ON THE GROUND THAT THE BOYCOTT WAS AN UNLAWFUL CONSPIRACY

The court below based its finding of liability as to all Petitioners upon a theory of civil "conspiracy." This was error, both as a matter of conspiracy law and because such a holding is repugnant to the First Amendment.

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7 *See, e.g., Cafeteria Employees Union Local 302* v. *Angelos,* 320 U.S. 293, 296 (1943); *A.F. of L.* v. *Swing,* 312 U.S. 321, 323, 325, 329 (1941). *See also Machesky* v. *Bizzell,* 414 F.2d 283, 290-91 (5th Cir. 1969).

The requisite elements of a conspiracy are simply not present in this case. While it has been said that the "chameleon-like" doctrine of conspiracy is "so vague that it almost defies definition," *Krulewitch* v. *United States,* 336 U.S. 440, 446-47 (1949) (Jackson, J., concurring), and that "no intelligible definition of conspiracy has yet been established," *see* 336 U.S. at 446 n.3, it is well established that no conspiracy exists unless there is an agreement to accomplish an *unlawful* purpose, or an agreement to accomplish a lawful purpose by *unlawful* means. *See Iannelli* v. *United States,* 420 U.S. 770, 777 (1975); *Arlinghaus* v. *Ritenour,* 622 F.2d 629, 639 (2d Cir.), *cert. denied,* 449 U.S. 1013 (1980); *United States* v. *Molina,* 581 F.2d 56, 61 (2d Cir. 1978); *Rotermund* v. *U.S. Steel Corp.,* 474 F.2d 1139, 1145 (8th Cir. 1973). Apparently the Mississippi courts recognize as much. 393 So. 2d at 1301.

Moreover, even if a "conspiracy" could be demonstrated by the fact that some individuals who were members of Petitioner NAACP had agreed among themselves to use unlawful means to effectuate the boycott, such evidence could not support a finding that membership in the NAACP in and of itself constituted membership in the conspiracy. Nor could such evidence support a finding that the NAACP itself or all of its members participating in the boycott were parties to such a conspiracy. It would still be necessary to show that each NAACP member—and indeed the NAACP itself—entered into the agreement to commit unlawful acts. Thus, in *Kline* v. *Coldwell, Banker & Co.,* 508 F.2d 226 (9th Cir. 1974), *cert. denied,* 421 U.S. 963 (1975) the plaintiffs contended that a trade association had conspired to fix prices, and that all of the members of the association could therefore be charged with participating in the conspiracy. The Ninth Circuit rejected this claim, holding that

> [T]he individual . . . members of the associations can be held responsible for the unlawful conspiratorial acts or declarations of the associations only if they are shown to have known and approved of such activities and of their unlawful objectives. 508 F.2d at 231, quoting *Riss & Co.*

v. *Ass'n of American Railroads*, 187 F. Supp. 306, 312-13 (D.D.C. 1960).

Similar results were reached in *Vandervelde* v. *Put & Call Brokers & Dealers Ass'n, Inc.*, 344 F. Supp. 118, 155 (S.D.N.Y. 1972) (to establish participation in the conspiracy it must be shown that the association member "knew of and condoned the [illegal] act in issue"); and *Riss & Co.* v. *Ass'n of American Railroads*, 187 F. Supp. 306, 312-13 (D.D.C. 1960).

The court below found that because of the "agreed use" of violence and other illegal acts to effectuate the boycott, "[t]he presence of a conspiracy is beyond preadvanture." 393 So. 2d at 1301. Yet there is no recitation in either decision below of any evidence suggesting that all Petitioners agreed to employ violence or other illegal means in this political boycott.[8] The conclusion below that a conspiracy existed was erroneous because it (a) failed to distinguish between legal (*e.g.*, the "social ostracism, vilification, and traduction") and illegal means of furthering the boycott; (b) failed to distinguish actions planned as part of the boycott and sporadic violent actions engaged in independently by certain individuals; and (c) failed to consider separately the culpability of each defendant. *Compare Selzer* v. *Fleisher*, 629 F.2d 809, 813 (2d Cir. 1980).

As this Court recently observed, "[t]here are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, but political expression is not one of them." *Citizens Against Rent Control/Coalition for*

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8 The chancellor's finding—adopted by the Mississippi Supreme Court—that "certain of the defendants, *acting for all others*, engaged in acts of physical force and violence," 393 So. 2d at 1300, seems to be no more than a restatement of those courts' miscomprehension of conspiracy law. The statement is true only if a conspiracy is first established, and then only as to those found to be co-conspirators, but not otherwise. *E.g.*, *Pinkerton* v. *United States*, 328 U.S. 640, 647 (1946); *United States* v. *Bermudez*, 526 F.2d 89, 98 (2d Cir. 1975), *cert. denied*, 425 U.S. 970 (1976).

Fair Housing v. *City of Berkeley, supra,* 50 U.S.L.W. at 4073. Because in this case the First Amendment rights of a large group are alleged to have been forfeited by the actions of a few individuals, the Constitution required the Mississippi courts to distinguish carefully between protected and unprotected activity and culpable and non-culpable persons, as discussed previously. The Mississippi courts made no such distinctions, and, accordingly, the decision below is not consistent with the First Amendment.

III.

THE REMEDIES IMPOSED BY THE MISSISSIPPI COURTS ARE UNCONSTITUTIONAL

This Court has made clear time and again that the First Amendment demands that any regulation of speech be "precisely drawn."[9] "Broad prophylactic rules" regulating speech are constitutionally unacceptable. *NAACP* v. *Button,* 371 U.S. 415, 438 (1963). Prior restraints on speech are particularly suspect, *see Nebraska Press Ass'n* v. *Stuart,* 427 U.S. 539, 559 (1976), but these admonitions against unnecessarily broad regulation of speech apply with equal force to both the injunctive relief and damages at issue in this case.[10]

(A) The Injunction Imposed Below Violates the First Amendment

The permanent injunction upheld by the Mississippi Supreme Court prohibits all further boycott-related activity, including peaceful marching, picketing, speechmaking and pam-

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9 *Consolidated Edison Co.* v. *Public Serv. Comm'n,* 447 U.S. 530, 540 (1980); *Police Dept. of Chicago* v. *Mosley,* 408 U.S. 92, 101 (1972); *Coates* v. *City of Cincinnati,* 402 U.S. 611, 614 (1972); *Carroll* v. *President and Comm'rs of Princess Anne,* 393 U.S. 175, 183 (1968).

10 *See United Mine Workers* v. *Gibbs,* 383 U.S. 715, 729-35 (1966); *United Mine Workers* v. *Pennington,* 381 U.S. 657, 671-72 (1965); *cf. Teamsters Local 20* v. *Morton,* 377 U.S. 252, 259-62 (1964).

phleteering, and is therefore fatally defective in breadth. For example, in *Youngdahl* v. *Rainfair, Inc.*, 355 U.S. 131 (1957), this Court approved of an injunction against threatening or provoking violence or obstructing ingress or egress to a business, but it made clear that violence "scattered in time and [largely] . . . unconnected with . . . picketing" was insufficient to warrant a broader injunction prohibiting all "picketing or patrolling." 355 U.S. at 139[11]

It is worth emphasizing, in this connection, that the Mississippi Supreme Court totally ignored the holding of the Fifth Circuit Court of Appeals with respect to the impropriety of the injunctive relief at issue in this very case. *Henry* v. *First National Bank of Clarksdale*, 595 F.2d 291 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980). In *Henry*, the present Petitioners obtained an injunction against the Mississippi Supreme Court's requirement that Petitioners post over a million dollars bond as a condition of pursuing their appeal. In concluding that Petitioners had a substantial chance of prevailing on appeal, the Fifth Circuit quite correctly said:

> The state court's injunction, however, was not limited to prohibiting acts or threats of violence but extended to every form of speech or activity designed to discourage for whatever reason anyone from trading with the businesses of the state plaintiffs. This sort of sweeping prohibition on speech and communication raises serious constitutional problems. 595 F.2d at 303.

To the same effect is the Fifth Circuit's decision in *Machesky* v. *Bizzell*, 414 F.2d 283 (5th Cir. 1969), a case presenting factual circumstances nearly identical to those at issue here. There, as here, the Mississippi courts approved a broad injunction that failed to balance the State's interest in preventing violence with the First Amendment right of peaceful boycotters to continue their protest. The Fifth Circuit found the Mississippi court's action unconstitutional:

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11 *See also Kunz* v. *New York*, 340 U.S. 290, 294-95 (1951); *Near* v. *Minnesota*, 283 U.S. 697, 721-22 (1931).

> The injunction here, however, has not struck such a balance. It prohibits all picketing in the designated business areas of Greenwood, for whatever purpose and in whatever manner carried out. This overshoots the mark and the situation cannot be saved by *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies*, . . . a case premised on violence of an intensity and duration in no way present here, or at least on the record before the District Court. 414 F.2d at 290-91.

To make matters worse, the injunction at issue prohibits the Petitioners from "persuading, soliciting, [or] advising . . . any person to withdraw his or her patronage or to cease trading with the complainants." This prohibition imposes a bald restriction on the content of Petitioners' future speech and is obviously invalid. *Police Dept. of Chicago* v. *Mosley*, 408 U.S. 92, 95 (1972).

Here, the Mississippi Supreme Court has held punishable and restrained a political message held lawful at least since *Thornhill* v. *Alabama, supra.* It has effectively prevented and punished speech that it characterizes as "intimidation, vilification and traduction," or that causes "social ostracism." And it has accomplished its objective with a sweeping regulation that prohibits even the most innocent spoken efforts to "persuade" consumers to withhold their patronage. This is a prior restraint in the most obvious sense, and grossly overreaches the proper bounds of governmental regulation of speech. *See Nebraska Press Ass'n* v. *Stuart*, 427 U.S. 539, 559 (1976).

(B) Damages May Not be Awarded for Losses Caused by Boycott Activities

To the extent that activities during the boycott exceeded constitutional limits, respondents may recover damages caused by such unprotected activity from the individuals who acted unlawfully. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 247 (1959). However, the Mississippi court has gone well beyond this, and has awarded damages to respondents not only for the consequences of supposedly unlawful

acts, and not only against persons acting improperly, but against all respondents for business losses caused by constitutionally protected, peaceful boycott activities.

The prior decisions of this Court make it plain that such a rule of law is untenable. While this Court has consistently recognized the right of states to provide remedies for violence which occurs in the course of picketing, "the permissible scope of state remedies in this area is strictly confined to the direct consequences of such conduct, and does not include consequences resulting from associated peaceful picketing." *United Mine Workers* v. *Gibbs,* 383 U.S. 715, 729 (1966); *see United Mine Workers* v. *Pennington,* 381 U.S. 657, 671-72 (1965); *Youngdahl* v. *Rainfair, Inc.,* 355 U.S. 131, 139-40 (1957).

In *United Mine Workers* v. *Gibbs, supra,* the Court ruled that where a union strike was marred by violence, damages could be recovered only for the unlawful violence and not for the lawful picketing. 383 U.S. at 729-35. The Court rejected the argument that its decision in *Meadowmoor, supra,* authorized a broader award of damages. Rather, the Court noted that *Meadowmoor* involved "special facts"—namely, "extreme and repeated acts of violence" which were so entangled with the picketing that such violence "would inevitably reappear" if picketing were not enjoined. 383 U.S. at 731. Without deciding whether the rationale of *Meadowmoor* could be applied to an action for damages rather than injunctive relief, the Court did conclude that "[w]hen the consequences of peaceful and violent conduct are separable, however, it is clear that recovery may be had only for the latter." 383 U.S. at 732. *See also United Mine Workers* v. *Pennington, supra* (damages awarded for Sherman Act conspiracy must exclude damages caused by lawful efforts to influence public officials).

The undifferentiated award of damages for both lawful and unlawful boycott activity also contravenes the fundamental principle that restraints on free speech must be narrowly drawn. *E.g., United States* v. *O'Brien,* 391 U.S. 367, 376-77 (1968); *United States* v. *Robel,* 389 U.S. 258, 268 (1967); *Shelton* v. *Tucker,* 364 U.S. 479, 488-89 (1960). When a state

wishes to punish or impose restrictions upon acts related to the exercise of free speech, it must do so in the manner which least interferes with protected First Amendment rights.

Thus, if respondents can prove that they were injured by the few acts of violence identified in the record, they are entitled to damages from those who caused them. But there is no support for an award of damages compensating respondents for the lawful effects of peaceful boycott activity or against all the participants in the boycott. Indeed, a contrary result would have a profoundly chilling effect upon political boycotts, for the risk of a crippling award of damages would increase with the success of each lawful boycott. The Mississippi Supreme Court's rulings on damages ignored this fundamental point and accordingly, should be set aside.

CONCLUSION

For the foregoing reason, *amicus* American Jewish Congress urges this Court to reverse the decision below.

Respectfully submitted,

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No. 81-202

IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,
v.
CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the position of the respondents in this case.

This case presents questions of profound importance concerning the liability of one who organizes a group expressive activity, such as a march, a rally, or a campaign of persuasion, for the misconduct of those who join in the activity. The resolution of these questions is of profound importance to the American Federation of Labor and Congress of Industrial Organizations, a

federation of approximately 102 national and international unions with a total membership of approximately 14,500,000 working men and women. The AFL-CIO and its affiliated unions often seek to exercise their First Amendment right of free speech through collective activity, and their continued ability to do so may turn on the resolution of the issues of vicarious liability presented by this case.

It is the thesis of the accompanying brief that there is a substantial danger in transporting a set of agency rules that grow out of the world of commerce into the wholly different context of political activity. Sensitive and sometimes subtle adjustments are called for in traditional common law concepts to take account of the values stated in the First Amendment. The accompanying brief attempts the task of developing the particular adjustments that we believe are constitutionally required.

This case has been "set for oral argument in tandem with No. 81-280, *General Building Contractors Association, Inc. v. Pennsylvania* and related cases." We understand the questions of imputed liability raised in these otherwise dissimilar cases to be the thread that ties them together. It is our submission that equally sensitive and subtle adjustments are required in applying common law agency concepts to the labor-management context, where the parties are bound together not by traditional contractual relations but by a unique jural arrangement established by the National Labor Relations Act, as amended. We here develop the required adjustments in that context to sharpen and illuminate the analysis we believe appropriate in this case as well.

Because of the holiday season, and the press of preparing *amici* briefs in several cases at once,* counsel for the AFL-CIO were unable to have the attached brief

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* In the last two weeks of 1981, the AFL-CIO will have submitted briefs to the Court in No. 81-395, *Steelworkers v. Sadlowski* (joint brief with petitioner); No. 80-2150, *Finnegan v. Leu*; and No. 80-2143, *Board of Education v. Pico.*

completed, printed and filed on December 24, 1981, when petitioners' brief was submitted. (Unlike *amicus*, petitioners were not required to have their brief printed by that date but instead submitted a typewritten brief; petitioners' printed brief has not yet been filed.) This motion and the accompanying brief are being served by courier on counsel for respondents so that the motion and brief will be received at about the same time that they would have been received had they been mailed on December 24th, at the start of the Christmas holiday weekend. It is our hope and belief that the granting of this motion at this time will not prejudice respondents' ability to respond nor delay this Court's consideration of the case. Under these circumstances, and in light of the weighty interests of the AFL-CIO in participating herein, we urge that this motion be granted despite our failure, which we regret, to file until December 30th.

CONCLUSION

For the above stated reasons this motion for leave to file a brief *amicus curiae* should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-202

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

INTRODUCTION AND SUMMARY OF ARGUMENT

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the AFL-CIO in this case is set forth in that motion.

The Court's order providing for review of the Mississippi Supreme Court's decision and judgment in this case states: "The petition for a writ of certiorari is granted. The case is set for oral argument in tandem with No. 81-280, *General Building Contractors Association, Inc. v. Pennsylvania* and related cases." — U.S. —, 50 L.W. 3375 (1981).

We understand the questions of imputed liability raised in these otherwise dissimilar cases to be the thread that ties them together.

Agency concepts have their genesis in the world of commerce. And rules of imputed liability such as *respondent superior* rest at bottom on the principal's legal right to set the manner in which his agents shall perform their assigned duties and the former's effective means of enforcing his will—the powers to retain, to discharge and to set compensation. It is for that reason that the critical distinction in this area has been that between agents who are "servants" and whose misconduct generates imputed liabilities and "non-servant agents," including "independent contractors," whose wrongdoing does not have that consequence.

There are substantial dangers in transporting a set of rules that grow out of, and are designed to fit, a certain set of relationships to other entirely distinct contexts. *Compare Kermerac v. Compaignie Generale*, 358 U.S. 625, 630-632 (1959). As we show in this brief, those difficulties are very much at the fore in determining the very meaning of such concepts as "principal," "agent" and "joint venturer" where the activity is not selling goods and services but a political boycott organized either by a single person or by a loose ad hoc association each of whose members is of equal rank, or where the parties are bound together not by traditional contractual arrangements or by the cash nexus but by the rules concerning "free collective bargaining" stated in the National Labor Relations Act, as amended. As this Court has recognized, sensitive and at times by no means obvious adjustments are called for in adapting and applying traditional common law concepts to take account of values, such as those stated in the First Amendment, or of unique jural relationships, such as those under the NLRA, that did not figure in the original calculus. *Compare New York Times v. Sullivan*, 376 U.S. 254

(1964); *Textile Workers v. Lincoln Mills*, 343 U.S. 448 (1952). And it appears true in this instance, as in others, that it is helpful in essaying the delicate task of shaping the proper federal rule to compare different but related situations such as the one in the instant case and that in *General Building Contractors et al.* In the argument that follows we therefore explore two paradigms that illuminate the imputed liability question where the wrong complained of grows out of expressive activity otherwise protected by the First Amendment. Then to sharpen the points made there we contrast the quite different governing principles and method of analysis called for where the claim is that an employer (or union) should be held liable for a wrong committed by the other party to collective bargaining.

ARGUMENT

I.

NAACP v. Claiborne Hardware raises issues of imputed liability in a context as sensitive as it is important: the context of group expressive activity. The case arises out of a "political boycott"—*viz.*, for purposes relevant here, an effort by blacks in Claiborne County, Mississippi, to obtain redress of numerous grievances (including desegration of schools, courtrooms, public hospitals, and other public buildings) that *inter alia* utilized attempts to persuade blacks in the County to refrain from patronizing respondents' businesses in order to exert pressure on respondents and through them on the County. The Mississippi Supreme Court did not purport to find—indeed it reversed the Chancery Court's findings to the effect—that the entire boycott effort was under Mississippi law unlawful. Rather, that court found only that eleven acts, occurring over more than a four-year period, were unlawful and did not identify the perpetrator of six of those acts. Yet these findings alone formed the predicate for affirming a sweeping injunction against all of the 91 petitioners and for imposing on each of them

liability for all monetary losses caused by the unlawful acts identified and by the lawful boycott acts as well.

The theory on which that liability rests is not at all clear to us from the opinion of the Mississippi court. For that reason—and because the case has broad implications and raises recurring issues of general significance—we think it useful to step back from the complex facts of this case and to examine, through two paradigms, the basic types of relationships which could, conceivably, from the basis for liability here or in like cases: the relationship of what we shall term "organizer" and "participant"; and the relationship of what we shall term "co-organizers."

1. *The "Organizer-Participant" Relationship.* A simple hypothetical illustrates this relationship, and poses the imputed liability issue: A—a membership group—plans, publicizes and sponsors constitutionally protected political activity such as a rally, a march, a speech, or a campaign of advocacy. A invites others—both its members and members of the public at large—to participate. Of the people who respond, one or more engages in acts of violence or commits other misdeeds in the course of the rally, etc. The victims of the wrong seek to hold A, the organizer of the event, liable for the acts of the participants. The question thus arises: to what extent may the organizer of an activity protected by the First Amendment be held responsible for the acts committed in the course of the activity by those who accept the invitation to join in the activity?

The answer to the question, we submit, lies in First Amendment principles which are well-established by the decisions of this Court. We begin with the elementary proposition that there is a "transcendent value to all society of constitutionally protected expression." *Bigelow v. Virginia*, 421 U.S. 809, 816 (1975). This is true not just of individual expression but of group expression

as well; indeed such collective expression is of especial importance because, as this Court recently observed, "by collective effort individuals can make their views known when, individually, their voices would be faint or lost." *Citizens Against Rent Control v. Berkeley*, —— U.S. ——, 50 L.W. 4071, 4072 (1981).

First Amendment freedoms are not only "supremely precious" in our society, however; they are also "delicate and vulnerable. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *NAACP v. Button*, 371 U.S. 415, 433 (1963). It is well established that the fear of damage awards may so deter the exercise of First Amendment rights. *E.g., New York Times Co. v. Sullivan*, 376 U.S. 254, 277-278 (1964). This Court has thus "been especially anxious to assure to the freedoms of speech and press that 'breathing space' essential to their fruitful exercise." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974), *quoting NAACP v. Button*, *supra*, 371 U.S. at 433. And the Court's "decisions furnish examples of legal devices and doctrines, in most applications consistent with the Constitution, which cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression, by making the individual the more reluctant to exercise it." *Smith v. California*, 361 U.S. 147, 150-51 (1959).

The doctrine of imputed liability, we submit, is such a doctrine. Applied in the economic sphere, there is little danger that imputing liability to A for the acts of his servant, agent, partner, or collaborator will deter A from engaging in a lawful, economic venture and even less danger that such imputed liability will deter A from engaging in constitutionally protected activity.[1] But, in

[1] *Cf. Smith v. California*, *supra*. In *Smith*, the Court, while acknowledging that States may impose strict liability on distributors of impure food without proof that the distributor knew of the impurity, held that States may not impose strict liability on

the context of expressive activity, rules imputing liability for the acts of participants can easily cast a grave chill over the exercise of First Amendment rights by would-be-organizers. Thus, in the First Amendment area, the rules of imputed liability a State fashions must be carefully measured against "exacting" constitutional standards. *Buckley v. Valeo*, 424 U.S. 1, 64 (1976).

In determining the parameters of constitutionally permissible rules of imputed liability for sponsors of First Amendment activities, this Court's decision in the area of defamation provide a useful analogy. At common law, of course, defamation was a strict liability tort. This Court has recognized, however, "that a rule of strict liability that compels a publisher or broadcaster to guarantee the accuracy of his factual assertions may lead to intolerable self-censorship." *Gertz v. Robert Welch, Inc., supra*, 418 U.S. at 340.[2] Yet, the Court also has acknowledged that there is a "legitimate state interest . . . [in] the compensation of individuals for the harm inflicted on them by defamatory falsehood." *Id.* at 341.

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sellers of obscene material without proof of knowledge of the obscenity. The Court explained:

> There is no specific constitutional inhibition against making the distributors of food the strictest censors of their merchandise, but the constitutional guarantees of the freedom of the speech and of the press stand in the way of imposing a similar requirement on the bookseller. [361 U.S. at 152-53]

[2] The Court had provided the doctrinal foundation for *Gertz* in *New York Times v. Sullivan, supra*, 376 U.S. at 279:

> Under such a rule [of strict liability], would-be-critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or for fear of the expense of having to do so. They tend to make only statements which 'steer far wide of the unlawful zone.' The rule then dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments.

The Court has thus sought "to define the proper accommodation between these competing concerns." *Id.* at 344. And the "accommodation" the Court has arrived at is, in essence, this: liability for defamation may be imposed only upon proof of "fault" by the defendant and only for compensation for "actual injury." *Id.* at 347, 349.[3]

The *New York Times-Gertz* analysis, we submit, provides the solution to the First Amendment question presented here. For in this instance, too, the question is whether a state court may apply familiar common law doctrine to impose monetary liability on an absolute fault standard so as to penalize and inhibit First Amendment rights. Like strict liability for defamation, so the automatic imputation of liability on the organizer of First Amendment activity for the misdeeds of participants would "lead to intolerable self-censorship." Yet, as in *Gertz*, the State does have an interest in "the compensation of individuals for the harm inflicted on them." Thus, here too, an accommodation of the competing interests is required.

In making that accommodation it is important to bear in mind first, that the State has no legitimate interest in providing compensation on account of activity protected by the First Amendment; and second, that the State can constitutionally achieve its aim of providing "compensation [to] individuals for the harm inflicted

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[3] The *degree* of fault constitutionally required to justify liability for defamation varies depending on the nature of the victim of the defamation. With respect to a "public person," the State has a "limited . . . interest" in providing compensation for a defamation; accordingly, the Court has required "clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth" in order to support liability for defamation. *Gertz, supra,* 418 U.S. at 342. For non-public persons, however, the Court has found the State interests in providing compensation far stronger and has permitted recovery on proof of negligence by the defendant in publishing the defamation.

on them" by imposing liability on the wrongdoers themselves.[4] In light of these considerations and the chilling effect that imputing liability to organizers of First Amendment activity for the conduct of each and every participant could have on group action, at the very least the "accommodation" struck in *Gertz* is equally compelled here: liability may not be imposed upon the organizer absent proof of fault on its part.

At a minimum, this means that liability could not constitutionally be imputed to an organizer of a First Amendment activity except on proof of "negligence" (as in *Gertz*) in managing that activity (as, for example by failing to comply with reasonable duties (not themselves unconstitutional) imposed by the State for maintaining order). Moreover, where, because of the political nature of the activities, the constitutional considerations are more closely analogous to those in *New York Times*, a higher degree of fault should be necessary for liability, that is, *knowing* commission of a wrong.[5]

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[4] In *New York Times* and *Gertz* the interest in providing compensation is not overcome unless the victim can establish that the harmful statement was made with the requisite degree of fault.

[5] An individual can be said to have knowingly committed a wrong not only when the individual personally executes the wrong, but also when the individual directs the wrongdoing or personally participates in the planning (or execution) of the wrong. A corporation or unincorporated association is likewise guilty of knowingly committing a wrong when it so acts. However, where the alleged wrongdoer is an entity, determining what constitutes its action often poses complex problems.

This Court addressed such problems in the context of labor organizations in *United Mine Workers v. Coronada Coal Co.*, 259 U.S. 344 (1922) and in *Coronado Coal Co. v. United Mine Workers*, 268 U.S. 295 (1925). In the first of these cases the Court, after concluding that an International Union was a suable entity, framed the issue of the Union's liability as follows: "whether the International Union was shown by any substantial evidence to have initiated, participated in, or ratified the interference with plaintiffs' business." 259 U.S. at 393. And in the second case the Court

2. *Co-Organizers.* Not infrequently, individuals and/or groups join together to plan, organize, and publicize a political event such as a march, rally, demonstration, etc. The event becomes, in a sense, their joint venture. If one of the co-organizers, in the course of the event, proceeds to commit an unlawful act, does the fact of the joint venture allow liability to be imputed to the other co-organizers more readily than liability can be imputed from a participant in the event to a single organizer?

The answer, we submit, is "No," as the analysis set forth in the context of the organizer-participant relationship applies equally. If liability could be imputed automatically to one co-organizer for another's wrongful acts a significant chill would be cast on the exercise of the right to associate to sponsor expressive activity. Furthermore, while the State does have an interest in providing compensation to the victim of the wrong, that interest is largely satisfied by providing a remedy against the actual wrongdoer/co-organizer, and does not require imputing liability to the others. For the reasons already given (*supra*, pp. 5-8), a constitutionally acceptable accommodation of the competing concerns requires that at least "fault" be proven on the part of the co-organizer to whom liability is to be imputed, and in cases like the present, a showing of knowing participation in the unlawful act is required.

The latter conclusion is buttressed by a series of closely analogous cases addressing the constitutionality of State efforts to impose criminal sanctions upon, or to deny benefits to, individuals on account of the wrongful acts of an organization with which the individual is or has been associated.

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emphasized that the Union could be said to have so acted only if it were "clearly shown . . . that what was done was done by [the union's] agents in accordance with [the union's] fundamental agreement of association." 268 U.S. at 304.

In those cases, the Court, concerned about "a real danger that legitimate political expression or association would be impaired," *Scales v. United States*, 367 U.S. 203, 229 (1961), "consistently disapproved governmental action imposing criminal sanctions or denying rights and privileges solely because of a citizen's association" with an organization which had committed unprotected acts, *Healy v. James*, 408 U.S. 169, 186 (1974). Rejecting such a doctrine of strict liability, the Court formulated instead the following rule:

> [I]t has been established that 'guilt by association alone, without establishing that an individual's association poses the threat feared by the Government,' is an impermissible basis upon which to deny First Amendment Rights. The Government has the burden of establishing a *knowing* affiliation with an organization possessing unlawful aims and goals, *and a specific intent to further those illegal aims.* [*Id.* (emphasis added)]

"A mere knowing membership without a specific intent to further the unlawful aims of an organization is not a constitutionally adequate basis" to deny privileges to the member of the organization. *Keyishian v. Board of Regents*, 385 U.S. 589, 606 (1967). Likewise, unless one co-sponsor of a lawful, political event shares a "specific intent to further the unlawful aims" of his co-sponsor, there is "not a constitutionally adequate basis" to hold the one sponsor liable for misdeeds committed by the second sponsor in the course of the event.

* * * *

It does not appear that the Mississippi Supreme Court in its decision here observed the constitutional limits, just discussed, on imputing liability in the political action context. At the start of its opinion, the court placed great emphasis on the role of the NAACP in organizing and sponsoring the political boycott; these portions of the court's opinion suggest that the NAACP was being

held liable on the basis of misdeeds by participants in the boycott without more. At other portions of its opinion, the court emphasizes first, an agreement between the NAACP and the other petitioners to conduct the boycott campaign; and second, the fact that some of those who agreed to do so committed unlawful acts in the course of the campaign. These portions of the opinion suggest that the NAACP and the other petitioners were co-sponsors of the boycott and are being held liable for the acts of certain co-sponsors without more. But as we have seen, in either event, the First Amendment requires proof of "fault" on the part of the NAACP and of each of the other petitioners held liable. The Mississippi Supreme Court appears not to have found such fault.

II.

General Building Contractors Association, Inc. v. Pennsylvania and its companion cases raise issues of imputed liability in a rather different context, the context of employment discrimination. As in *NAACP v. Claiborne Hardware*, the rules for determining whether liability may be imputed must be determined by federal law—in this instance, federal statutory law. And as in *NAACP v. Claiborne Hardware*, the resolution of the issues depends upon a close analysis of the relationship of the parties—the employer and union—to determine whether that relationship warrants imputing the wrongs of one to the other. Since the employer-union relationship is largely a product of federal labor law, it is with that law that analysis must begin.

The national labor policy is premised on the right of employees to form autonomous labor organizations. "The theory of the [National Labor Relations] Act is that the making of voluntary labor agreements"—Congress' preferred means for achieving industrial peace—is "encouraged by protecting employees' rights to organize for collective bargaining." *Labor Board v. American Ins.*

Co., 343 U.S. 395, 401-02 (1952). Thus, § 7 of the NLRA grants employees the "right to *self*-organization." And § 8(a) of the Act prohibits employers from interfering with employees' exercise of that right on the one hand, or from contributing support to the formation of a labor organization on the other.[6] The Act thus contemplates workers free to form labor unions and unions free from the influence of employers. *See also* § 8(a)(2) of the NLRA.

Having thus guaranteed free and autonomous labor unions, the national labor policy requires employers and unions to bargain with each other "with respect to wages, hours and other terms and conditions of employment." (§§ 8(a)(5), 8(b)(3), 8(d)). At the outset of a collective bargaining relationship, the employer exercises complete control over such matters. "Management hires and fires, pays and promotes, supervises and plans. And these are part of its function and absent a collective bargaining agreement it may be exercised freely. . . ." *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574, 583 (1960). " 'The introduction of a concept of mandatory collective bargaining . . . necessarily represents an encroachment upon the former autonomous position of management.' " *NLRB v. Catholic Bishop*, 440 U.S. 490, 503 (1979). Through collective bargaining, unions seek to place limits on management's erstwhile complete control over the workplace, and may seek to obtain for themselves control over some of the functions that in the absence of a bargaining agreement would rest with management. "[T]he extent of union and management participation in the administration of such matters is itself a condition of employment to be settled by bar-

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[6] Similarly, 29 U.S.C. § 411(a)(4) prohibits an "interested employer or employer association" from finan[cing], encourag[ing] or participat[ing] in" any action against a union by a union member. And 29 U.S.C. § 481(g) prohibits an employer from expending monies to promote the candidacy of any candidate for union office.

gaining." *Labor Board v. American Ins. Co., supra,* 343 U.S. at 408.

The collective bargaining contemplated by labor policy thus "cannot be equated with an academic collective search for truth—or even with what might be thought to be the ideal of one." *Labor Board v. Insurance Agents,* 361 U.S. 477, 488 (1960). The law "referee[s] the process of collective bargaining" but "leav[es] results of the contest to the bargaining strength of the parties." *Porter Co. v. NLRB,* 397 U.S. 99, 108 (1970). "The parties . . . proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest. . . . The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner Act and Taft-Hartley Acts have recognized." *Insurance Agents, supra,* 361 U.S. at 488-89. The system reflects Congress' intent that the parties "should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." *Id.* at 488. *See also, e.g., California Brewers Ass'n v. Bryant,* 444 U.S. 598, 608 (1980); *Teamsters Local v. Lucas Flour Co.,* 369 U.S. 95, 104 (1962).

In sum, national labor policy contemplates autonomous unions and employers, negotiating with each other at arms length, over, *inter alia,* the respective role each is to play in the running of the workplace. National labor policy does not seek to predetermine the results of that bargaining but rather permits the parties to determine, based upon their respective bargaining power, the role each will play.

The implications of this relationship between union and employer for the issues of imputed liability in the employment discrimination context are as follows: [7]

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[7] *General Building Contractors et al.* involves not only unions and employers but also several contractor associations. These associations were formed by various employers to serve as the employers'

First, there is no possible principled basis for applying the doctrine of *respondeat superior* to impute discrimination by a union to the employer or *vica versa*. That doctrine, born of the relationship of master and servant, is predicated "upon the fact that the [wrong] is brought about in the course of an undertaking for the benefit, and subject to the right, of the principal to control his servant or other agent," *Restatement (Second) of Agency*, § 216, comment a; indeed, the doctrine is applicable only where the agent is "subject to the other's control or right of control," *id.* § 220(1); *see id.* § 250.[8] But, as we have seen, neither an employer nor a union necessarily acts "for the benefit of" the other, and neither is subject to the "control" of the other; to the contrary, the national labor policy requires that unions and employers be independent of each other and assumes that each acts in its own self-interest. Thus, the premise for *respondeat superior* is lacking in the union-employer relationship.

Second, the doctrine of joint enterprise liability is, in the main, equally inapplicable to the union-employer relationship. As Professor Prosser explains in his treatise:

> The doctrine of vicarious responsibility in connection with joint enterprises rests upon an analogy

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bargaining agent in multi-employer collective bargaining with the union. The right of the employers to designate such a bargaining representative of their choosing is expressly protected by § 8(b)(1)(B) of the NLRA. *See generally NLRB v. Truck Drivers Local 449*, 353 U.S. 87 (1957). The bargaining agent's sole function is to engage in bargaining on behalf of the employers. We know of no basis for imputing liability to such agents whose role in the collective bargaining system is so limited; indeed to do so is, in effect, to penalize the decision of employers to bargain through an association—a decision which the NLRA seeks to protect.

[8] See, e.g., *Singer Manufacturing Co. v. Rahn*, 132 U.S. 518, 523 (1889) ("the relation of master and servant exists wherever the employer retains the right to direct the manner in which the business shall be done as well as the result to be accomplished or, in other words, 'not only what shall be done, but how it shall be done.' *Railroad Co. v. Hanning*, 82 U.S. (15 Wall.) 649, 656."); W. Prosser, *Law of Torts*, § 70 (4th ed. 1971).

> to the law of partnership. In a partnership, there is a more or less permanent business arrangement, creating a mutual agency between the partners for the purpose of carrying on some general business, so that the acts of one are to be charged against another. A 'joint enterprise' is something like a partnership, for a more limited period of time, and a more limited purpose. It is an undertaking to carry out a small number of acts or objectives, which is entered into by associates under such circumstances that all have an equal voice in directing the conduct of the enterprise. The law then considers that each is the agent or servant of the others, and that the act of any one within the scope of the enterprise is to be charged vicariously against the rest. [W. Prosser, *Law of Torts*, § 72 (4th ed. 1971)]

With rare exceptions, unions and employers are not involved in "partnerships" in which each "ha[s] an equal voice," and in which "each is the agent or servant of the other." A collective bargaining agreement may leave complete authority over all management functions with the employer (subject to certain substantive limitations on the employer's power, as when an employer retains the power to discharge, but can do so only for cause). Or, an agreement may give complete authority over some functions to the union (as when the agreement provides for a union-run exclusive hiring hall). In either event, within their respective spheres, the union and the employer remain autonomous and independent. Thus, the doctrine of joint enterprise liability provides no basis for imputing liability from unions to employers or *vice versa*.

The only other basis that has been suggested or that we can conceive on which imputed liability in the employment discrimination context might rest is the doctrine of non-delegable duties. As stated in the *Restatement (Second) of Agency*, § 214, that doctrine provides:

> A master or other principal who is under a duty to provide protection for or to have care used to protect others or their property and who confides the performance of such duty to a servant or other person is subject to liability to such others for harm

caused to them by the failure of such agent to perform the duty.

The focus of that doctrine has been to impose liability on, *e.g.*, common carriers, landlords, municipalities, and employers for injuries suffered by *e.g.*, passengers, tenants, pedestrians, or workers as a result of negligence by a retained contractor in the maintenance of *e.g.*, trains, apartments, sidewalks, or workplaces. *See* W. Prosser, *supra*, § 71; *Restatement (Second) of Agency*, § 214, comments (b)-(d).

By its very nature, the non-delegable duty doctrine is inapplicable in several types of employment discrimination cases. Where a union is found to discriminate within a sphere indisputably its own—for example, where a union is found to discriminate in admitting members—the non-delegable duty doctrine is inapplicable since by no stretch of the imagination is the union performing a duty of the employer. Likewise, where an employer is found to discriminate in the exercise of a management prerogative over which the union has not obtained control—for example, where an employer which retains authority for hiring is found to discriminate in the hiring process—the non-delegable duty doctrine would be equally inapplicable, as the employer could hardly be said to be acting pursuant to a delegation by the union in hiring employees.[9] Thus, the only category of cases in which

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[9] A number of lower courts have nonetheless held unions vicariously liable for acts of discrimination by an employer on the theory that in enacting Title VII (and/or § 1981) Congress imposed on unions the duty to prevent employers from violating the law. *E.g. Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 989 (D.C. Cir. 1973); *Dickerson v. U.S. Steel Corp.*, 472 F.Supp. 1304, 1353-54 (E.D. Pa. 1978); *United States v. City of Buffalo*, 457 F.Supp. 612, 639 (W.D.N.Y. 1978). Under these cases, a union that fails to bargain for and enforce contract terms prohibiting employment discrimination—the very thing that Title VII and § 1981 proscribe—is liable for the employer's violations of those laws.

The duty that these cases place on unions is, so far as we are aware, without precedent. We know of no other situation in which a statute has been read to impose upon one private party a duty to

the non-delegable duty doctrine is even arguably applicable is cases in which a union, having secured respon-

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prevent another, independent private party from committing acts violative of the rights of third parties. That Congress did not intend, in Title VII or in § 1981, to create such a novel duty is apparent from the following considerations:

First, the language of Title VII and of § 1981 provide no support for the proposition that Congress intended to create the duty the courts have imposed on unions. In § 703(c) of Title VII Congress treated specifically with the subject of union responsibility for employer conduct and mandated that unions not *"cause or attempt to cause"* an employer to discriminate; Congress did not direct unions to prevent employers from discriminating. The fact that Congress provided for liability where a union causes an employer to discriminate "suggests that Congress did not intend [Title VII] liability to attach where such causation [is] absent." *Monell v. New York City Department of Social Services*, 436 U.S. 658, 691 (1978) (addressing analogous language in § 1983). And § 1981—which "affords no greater substantive protection than Title VII," *New York City Transit Authority v. Beazer*, 440 U.S. 571, 584 n.24 (1979), and which provides only that "All persons . . . shall have the same right to make and enforce contracts . . . as is enjoyed by white citizens"—cannot be read to impose on unions an affirmative duty to prevent employers from discriminating.

Second, there is not a word in the legislative history of Title VII or of § 1981 that even remotely suggests that Congress intended to impose upon unions the duty to police the conduct of employers. Had Congress desired to place such an extraordinary duty on unions, it surely would have given some hint of that intent.

Third, Title VII and § 1981 contain an enforcement mechanism which is in no way dependent upon action by unions. Under those laws, an individual whose rights are violated may sue the wrongdoer to obtain redress for the wrong that occurred. In addition, under Title VII there is a federally funded governmental agency, the Equal Employment Opportunity Commission, charged with enforcing the law. It is therefore especially unlikely that Congress decided, *sub silentio*, and without granting any monies to unions, to place on unions a duplicative and costly responsibility to insure that employers obey the commands of Title VII and § 1981.

Fourth, the duty to prevent employer discrimination which some courts have imposed upon unions is inconsistent with the national labor policy. Under that policy, unions are called upon to "balanc[e]

sibility over a function which, in the absence of a collective bargaining agreement would be exercised by management, proceeds to act discriminatorily in performing the function.

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individual and collective interests" so as to "maximize overall [welfare] of its members," *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 742 (1981); unions thus must establish their priorities (both in bargaining and in contract enforcement) based on an assessment of the overall interests of their members. Where Congress has seen a need to dictate certain substantive terms of employment (rather than relying on "economic combat," *Gateway Coal v. Mine Workers*, 414 U.S. 368, 379 (1974), to establish employee rights), it has done so directly, legislating the substantive result and providing a statutory mechanism for enforcing the rights thus created. This is precisely what Congress did in enacting Title VII. But Congress has never compromised the "process of free and voluntary collective bargaining," *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95, 104 (1962), by attempting to shape the bargaining agenda of the parties. Nor did Congress do so in enacting Title VII:

> Congress passed the Civil Rights Act of 1964 against the backdrop of this Nation's longstanding labor policy of leaving to the chosen representatives of employers and employees the freedom through collective bargaining to establish conditions of employment applicable to a particular business or industrial environment. . . . It does not behoove a court to second-guess either that process or its products. [*California Brewers Ass'n v. Bryant, supra*, 444 U.S. at 608]

One final point need be added. Nothing in the duty of fair representation, a duty which has been implied from the NLRA, imposes upon unions a responsibility to prevent employers from violating Title VII or § 1981. The duty of fair representation requires only that, in fulfilling its role as *exclusive bargaining representative*, a union's actions not be "arbitrary, discriminatory, or in bad faith," *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Moreover, the parameters of the duty of fair representation are of "equal scope" with the union's "authority . . . as exclusive bargaining agent." *Humphrey v. Moore*, 375 U.S. 335, 342 (1964). Since a union is not the exclusive agent for employees in the vindication of their statutory rights—Title VII rights exist independently of the union and can be enforced by an individual employee independently of the union, *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974)—unions have no such duty with respect to the enforcement of those statutory rights.

Even in this category of cases, we submit, the non-delegable duty doctrine has no place. To suggest that where the result of an economic contest such as collective bargaining is that one party must surrender authority over, e.g., hiring to the other the former has "delegated" or "confided" its function to the latter ignores central pieces of the national labor policy. In the first place, collective bargaining is not a process of delegation; it is, in large measure, combat between adversarial forces over the allocation of authority covering the employment process (*see* p. 13, *supra*). Furthermore, the authority to hire (or fire or promote) is not a duty which is vested by law in the employer unless "delegated" by him; the premise of the collective bargaining system is that the question of who will exercise that and similar authority is an open one, to be resolved in negotiation (*see* pp. 12-13, *supra*). Thus, the presuppositions of the non-delegable duty doctrine simply do not apply in the labor-management context, and the doctrine should not be imported into that context.[10]

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[10] In making this argument we recognize, of course, that in *Morrison-Knudsen Co. v. NLRB*, 275 F.2d 914 (2d Cir. 1960), *cert. denied*, 366 U.S. 909, and in several NLRB decisions predicated on *Morrison-Knudsen*, *e.g.*, *Fruin-Colnon Corp.*, 227 NLRB 59, 68 (1976), the non-delegable duty principle has been applied to impute liability to employers for union violations of § 8(b)(2) of the NLRA. *See also Pacific Maritime Ass'n v. NLRB*, 452 F.2d 8 (9th Cir. 1971). *But see Lummus Co. v. NLRB*, 339 F.2d 728 (D.C. Cir. 1964) and *NLRB v. Southern Stevedoring Co.*, 332 F.2d 1017 (5th Cir. 1964) (both requiring proof that the employer knew or should have known of the union's wrong—a requirement inconsistent with the non-delegable duty doctrine). For the reasons set forth in text, we respectfully suggest that these cases—which are devoid of any analysis— were erroneously decided and should not be extended into the employment discrimination context.

CONCLUSION

For the above stated reasons the judgment of the Supreme Court of Mississippi should be reversed.

Respectfully submitted,

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IN THE
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OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,
v.
CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION AND THE NATIONAL ORGANIZATION FOR WOMEN

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IN THE

Supreme Court of the United States

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Petitioners,

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CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION AND THE NATIONAL ORGANIZATION FOR WOMEN FOR LEAVE TO FILE BRIEF AMICI CURIAE

The American Civil Liberties Union ("ACLU") and the National Organization for Women ("NOW") respectfully move for leave to file the attached brief *amici curiae*. The consent of the attorney for the petitioners has been obtained and filed with the Clerk, but respondents have refused consent.

The ACLU was founded over 60 years ago to preserve and protect the fundamental principles of the Bill of Rights. It is a national, non-partisan organization of over 200,000 members. It has frequently appeared in this Court and many other courts, both as representative of parties and as *amici curiae*.

The ACLU's interest in this case stems from the long-standing concern of the organization and of its members

to protect to the fullest extent the rights secured by the First Amendment to the Constitution. The decision of the Supreme Court of Mississippi that is under review here strikes at the very heart of the First Amendment. In subjecting all of the petitioners to liability for damages and to the restraints of an injunction, the decision threatens virtually complete elimination of the right to engage in a time-honored form of expression, the civil rights boycott. Upon many other occasions and in many other cases, the ALCU has acted vigorously to protect those rights and wishes to express its views on the issues to the Court in this *amici* brief.

NOW shares the interests of the ACLU in protecting the right to engage in boycotts to advance civil rights concerns. NOW was the defendant in actions brought by two state attorneys general seeking declaratory and injunctive relief against NOW for its role in promoting the "ERA boycott", under which several hundred church groups, professional associations, women's organizations, and civil rights groups have adopted resolutions not to hold their meetings or conventions in states that have not yet ratified the Equal Rights Amendment. NOW has successfully defended the right to engage in such activity. *Missouri* v. *National Organization for Women*, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980). NOW is interested in being free to engage in similar activity in the future and thus has a very direct interest in any legal challenge to the ability of a civil rights group to promote boycott activities in furtherance of social justice.

Additionally, *amici* have noted that this case has been set for oral argument in tandem with *General Building Contractors Association* v. *Pennsylvania*, No. 81-280, and related cases, 50 U.S.L.W. 3275 (U.S., Nov. 10, 1981). As the attached brief *amici curiae* demonstrates, there is no relationship between these two cases, and a decision by the Court in favor of petitioners in this case

would not be inconsistent with a decision in favor of the respondents in the *General Building Contractors* case. The petitioners may not address this issue in their brief and accordingly the attached brief *amici curiae* can make a contribution to the Court's decisional process in this case.

Accordingly, the ACLU and NOW move for leave to file the attached brief *amici curiae*.

Respectfully submitted,

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On Writ of Certiorari to the Supreme Court of Mississippi

BRIEF AMICI CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION AND THE NATIONAL ORGANIZATION FOR WOMEN

INTEREST OF AMICI

The interest of *amici* appears in the foregoing motion.

STATEMENT

In 1966, the NAACP and others in Port Gibson, Mississippi, organized a boycott of white merchants to bring public attention to a long series of grievances suffered by black residents of that area and to exert pressure for reform. More than three years later, a group of those merchants brought this action alleging that the boycott was an illegal conspiracy under state law. Evidence showed that, in addition to the usual picketing and other peaceful activity, there had from time to time been acts of violence that coerced some black residents to refrain from doing business with the white merchants. There was no proof that the violence was directed or condoned by the NAACP. The trial court, however, is-

sued a broad injunction not only against further violence but also against all peaceful picketing and advocacy aimed at persuading local residents not to trade at the white-owned shops. The Mississippi Supreme Court affirmed and also held that the NAACP and numerous individuals who had engaged only in peaceful picketing were jointly and severally liable in damages for all losses the plaintiffs incurred because of the boycott, whether or not traceable to violence. App. 1a-35a, 393 So. 2d 1290 (Miss. 1980).[1]

SUMMARY OF ARGUMENT

This case gives the Court an opportunity to declare an important principle of constitutional law: That a civil rights boycott is to be judged, not under standards arising from the law of conspiracy, but instead as activity which lies at the core of the First Amendment's protection of free speech and free association for political ends.

In this brief, *amici* will first define a civil rights boycott—an established and important means of associating for the expression of political viewpoints. We will demonstrate that, like other methods of exercising this fundamental right, civil rights boycotts are essential to self-government in a society in which not all citizens have a high degree of access to the political decision-making process. We will then show that concepts of common law conspiracy can play no role in judging these activities, even when violence occurs, for those concepts not only raise troublesome due process questions but also do not reflect established First Amendment principles. We will show that tort law can be accommodated to those principles through the application of familiar doctrines (other than the law of conspiracy) that have been endorsed by the American Law Institute and that identify the persons who are and should be liable for violent acts. Finally, we will show that the principle we advocate is in

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[1] Citations to "App." are citations to the Appendix to the Petition for Certiorari.

no way disminished or undermined by the very different rule of law, which forms the basis for the lower court decision in *General Building Contractors* v. *Pennsylvania* (No. 81-280), that remedial civil rights laws should be read expensively to accomplish their purpose as effectively as possible.

ARGUMENT

I. A Civil Rights Boycott Is At the Core of First Amendment Protection.

A. *A Civil Rights Boycott Is A Form of Political Speech and Association.*

It is important, at the outset, to define with care what is involved in this case—a civil rights boycott—for a loose definition, especially one drawn from the realm of antitrust, masks the important constitutional issues.

Although sometimes described as a *combination* to withhold a business relationship, a civil rights boycott combines three essential elements: (1) advocacy that (2) persons choose what or where to buy (3) to promote social justice.

Freedom of choice is the governing rule of the marketplace. Ever since colonial times, Americans have exercised this freedom to promote social justice. People vote not only with their ballots but also with their dollars and their personal conduct. *See, e.g.*, C. LINDBLOM, POLITICS AND MARKETS: THE WORLD'S POLITICAL-ECONOMIC SYSTEMS 144 (1977).

It is just such reasons that led colonial merchants to boycott English goods until the Stamp and Townsend Acts were repealed. In modern times people have refused to ride buses in Montgomery, Alabama, as a protest against racial discrimination; refused to buy table grapes or lettuce, or Farah slacks, or J.P. Stevens branded linens, out of sympathy with workers seeking fair treatment; refused to buy Saran Wrap made by a company that also manufactured napalm;[2] and refused to attend meetings

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[2] *See* D. VOGEL, LOBBYING THE CORPORATION; CITIZEN CHALLENGES TO BUSINESS ACTIVITY 43-46 (1978).

or conventions held in states that have not ratified the Equal Rights Amendment.[3] Religious groups today urge Americans to refuse to purchase goods advertised on television programs which feature sex and violence. The list is nearly endless.

Some of these activities occur at a single point in time and place; others are spread over large areas and many months or years. Sometimes the participants are constant and well defined, but often the composition of the group fluctuates as new adherents join while others lose interest.

As with ballots and other forms of political expression, these plainly lawful activities are more effective when they are the acts of many rather than the few. Here advocacy enters. Civil rights boycotts are sometimes wholly spontaneous. More often they are stimulated by an advocate who makes the point that large-scale refusals to buy or travel can communicate a political message. And if the boycott attracts large numbers of participants, the reason lies in their sympathy with the message and with their determination, often at considerable personal inconvenience, to demonstrate the depth of their support. Thus it is not "conspiracy", in any familiar meaning of the offensive term, but shared political beliefs that bring together the participants in a civil rights boycott. As the Court said just the other day:

> "We begin by recalling that the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. The 18th Century Committees of Correspondence and the pamphleteers were early examples of this phenomena and the Federalist Papers were perhaps the most significant and lasting example. The tradition of volunteer committees for collective action has manifested itself in myriad com-

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[3] This was the "ERA Boycott" which was unsuccessfully attacked in Missouri v. National Org. for Women, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980).

munity and public activities; in the political process it can focus on a candidate or on a ballot measure. Its value is that by collective effort individuals can make their views known, when, individually, their voices would be faint or lost." *Citizens Against Rent Control* v. *City of Berkeley*, 50 U.S.L.W. 4071, 4072 (U.S., Dec. 14, 1981).

The importance of the civil rights boycott as a form of political association and expression arises from the nature of the politicial process itself. It has long been recognized that many government decisions result from the interaction of various "interest groups."[4] An interest group may be defined as any group with a shared political belief or goal. The group may be relatively permanent, like the National Association of Manufacturers or the National Council of Churches, or it may be transitory, such as when several different groups form a temporary coalition around a specific issue.[5]

A boycott can be an effective tool for communicating the group's message. It has special value to groups that do not have a high degree of access to the decision-making process (and blacks in Mississippi in 1966 certainly fit that description[6]). It also has special value when a group is

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[4] *See, e.g.*, A. BENTLEY, THE PROCESS OF GOVERNMENT (1908); P. ODEGARD, PRESSURE POLITICS—THE STORY OF THE ANTI-SALOON LEAGUE (1928); H. ZEIGLER, INTEREST GROUPS IN AMERICAN SOCIETY (2d ed. 1972); R. SALISBURY, INTEREST GROUP POLITICS IN AMERICA (1970); R. Salisbury, "Interest Groups," 4 HANDBOOK OF POLITICAL SCIENCE (Greenstein and Polsby, eds. 1975).

[5] Interest groups are sometimes referred to disparagingly as "special interest groups," *see, e.g., Citizens Against Rent Control* v. *City of Berkeley, supra*, 50 U.S.L.W. at 4072, but such labels are of no assistance in understanding or analyzing the pertinent issues.

[6] "In the mid-60's, Port Gibson (as well as the whole State of Mississippi) represented a classic case of segregation and discrimination." Sandifer & Smith, *The Tort Suit for Damages: The New Threat To Civil Rights Organizations*, 41 BROOKLYN L. REV. 559-60 (1975). *See* J. BASS, UNLIKELY HEROES, 172-200 (1981); F.

seeking to change the status quo, which both inertia and entrenched interests will tend to maintain. Further, a boycott conveys a particular kind of political message: that a significant number of persons feel frustrated by their lack of political access and feel strongly enough about their goal to change their buying patterns, perhaps at some cost and inconvenience, such as by driving to the next county for groceries and other necessities. This is an important message, for the law-maker gives consideration not only to technical arguments for or against a proposed measure but also to the depth of support or opposition it enjoys.[7]

READ & L. MCGOUGH, LET THEM BE JUDGED: THE JUDICIAL INTEGRATION OF THE DEEP SOUTH 195-248, 353-371 (1978).

[7] Some civil rights boycotts are labelled as "secondary" boycotts, implying that they aim at merchants who have no power to meet the boycotters' demands and thus avoid economic harm. *See, e.g.*, App. 44b-51b; App. 19a, 393 So. 2d at 1299; Southern Christian Leadership Conf. v. A.G. Corp., 241 So. 2d 619, 624 (Miss. 1970); *Missouri* v. *National Org. for Women, supra*, 620 F.2d at 1312. This approach misses the point (and the court below did not view the label as significant in this case). The objective of a civil rights boycott like the one in Port Gibson is often to protest a discriminatory system, composed of both political and economic elements. (Of course the objective may be to protest unfair practices of the merchants themselves, in which case the merchants are precisely the ones who can respond to the demands.) Moreover, it is often the case that the merchants whose trade is shunned are influential members, not to mention beneficiaries, of the political structure about which the boycotters are complaining. Finally, one objective of a boycott is to draw attention to the conditions about which the boycotters are complaining, and as this Court has said:

> "It is inevitable, whenever an attempt is made to influence legislation by a campaign of publicity, that an incidental effect of that campaign may be the infliction of some direct injury upon the interests of the party against whom the campaign is directed. . . . To hold that the knowing infliction of such injury renders the campaign itself illegal would thus be tantamount to outlawing all such campaigns."

Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 143-44 (1961), quoted in *Missouri* v. *National Org. for Women, supra*, 620 F.2d at 1315 (footnote omitted).

Thus, it can readily be seen that a civil rights boycott is the very essence of expression and association for political ends.

B. *Protection of Political Speech and Association Is Central to the First Amendment.*

This Court has long held that "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75 (1964). Political expression makes possible an "unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth* v. *United States*, 354 U.S. 476, 484 (1957).

> "The Court has long viewed the First Amendment as protecting a market place for the clash of different views and conflicting ideas. That concept has been stated and restated almost since the Constitution was drafted." *Citizens Against Rent Control* v. *City of Berkley, supra*, 50 U.S.L.W. at 4072.

And because the First Amendment serves as a "charter for government" and not merely as "an institution for learning," the protection of the First Amendment is nowhere more necessary than with respect to speech that promotes political action. *Thomas* v. *Collins*, 323 U.S. 516, 537 (1945); *see NAACP* v. *Button*, 371 U.S. 415, 429 (1963).

The Court has also recognized that political expression covers a broad range of actions and thus has granted First Amendment protection to such diverse activities as expenditures in support of political issues or candidates, *Citizens Against Rent Control* v. *City of Berkeley, supra*, and *Buckley* v. *Valeo*, 424 U.S. 1 (1976); union organizing, *Thomas* v. *Collins*, 323 U.S. 516 (1945); advertising and lobbying campaigns in support of legislation, *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); litigation, *NAACP* v. *Button, supra*, and picketing, *Carey* v. *Brown*, 447 U.S. 455 (1980). In *Carey*,

the Court held that public protests over "important economic, social, and political subjects" such as the racial segregation involved in the case before it reflect " 'an exercise of . . . basic constitutional rights in their most pristine and classic form,' " which have *"always rested on the highest rung of the hierarchy of First Amendment values . . . ."* 447 U.S. at 466-67 (emphasis supplied). And in *NAACP* v. *Button*, *supra*, in striking down a statute construed to prohibit the NAACP from encouraging and supporting litigation to challenge racial discrimination, the Court said:

> "Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. . . . For such a group, association for litigation may be the most effective form of political association." 371 U.S. at 429, 431.

There can be no doubt that it is just such political expression that is under challenge here. Although civil rights boycotts, like civil rights picketing or litigation, involve conduct, their essence is speech and association to promote social justice: advocating that others associate in a common refusal to deal with particular products, individuals, or organizations in order to achieve racial equality. The purpose of the boycott activities enjoined by the Mississippi state courts, for example, was "to protest racial discrimination by the merchants and city government of Port Gibson." *Henry* v. *First National Bank*, 595 F.2d 291, 302 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980). As such the boycott follows in a long tradition of group protest activities aimed at achieving fundamental political reforms, which represent "essential political speech lying at the core of the First Amendment." *Id.* at 303.[8]

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[8] The Fifth Circuit's holding in *Henry* that the Port Gibson boycott is protected by the First Amendment was the basis for its decision that petitioners could appeal within the state court system without posting bond. In view of the importance of First Amendment principles to the proper resolution of this case, it is

II. Civil Rights Boycotts Should Not Be Judged As Common Law Conspiracies.

> "The tort of 'conspiracy' is poorly defined, and highly susceptible to judicial expansion; its relatively brief history is colored by use as a weapon against the developing labor movement."

So said this Court fifteen years ago in reversing a damages award against the United Mine Workers that was in part based upon an alleged "unlawful conspiracy and an unlawful boycott . . . to maliciously, wantonly and willfully interfere with [plaintiffs'] contract of employment and with his contract of haulage" and upon proof that two days of localized violence marked the beginning of a nine-month period of peaceful picketing at a mine. *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 718-19, 732-33 (1966).[9]

The type of "conspiracy" involved in *Gibbs* and in this case was *not* an agreement to accomplish an *unlawful objective*. In both cases, the objectives of the agreement were entirely lawful. What triggered state-court intervention was the *unlawful means* that some persons had employed to further the common—and lawful—objective. Notably, to impose liability the unlawful means need not have been part of the agreed plan to accomplish the

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astonishing that the Supreme Court of Mississippi refers to *Henry* only in its description of the proceedings to date and makes no reference to the Fifth Circuit's constitutional holding.

[9] The Court's reference to the tort having been invoked to combat the labor movement is of course entirely accurate. *See* S. & B. WEBB, HISTORY OF TRADE UNIONISM 597-98 (1920); Note, 33 TULANE L. REV. 410, 411 (1959); Sayre, *Labor and the Courts*, 39 YALE L.J. 682, 686-87 (1930).

In more recent times the same or a similar theory has been employed to suppress civil rights boycotts. Sandifer & Smith, *The Tort Suit For Damages: The New Threat To Civil Rights Organizations*, 41 BROOKLYN L. REV. 559, 561-64 (1975); Note, *The Common-Law and Constitutional Status of Anti-Discrimination Boycotts*, 66 YALE L.J. 397, 397-98 (1957).

objective; it is enough that at some point in carrying out the agreed plan some member of the group decides to employ unlawful activity to further the objectives of the plan. App. 23a, 393 So. 2d at 1301; *see* 16 AM. JUR. 2d *Conspiracy*, § 49, p. 267 (1969); 15A C.J.S. *Conspiracy*, §§ 1(1), 4 (1967). Indeed, in several states the unlawful means need not be unlawful standing alone but instead may consist of acts that would be entirely lawful if committed by a single individual.[10] Note, *Civil Conspiracy: A Substantive Tort?*, 59 B.U.L. REV. 921, 926 (1979). Once there is proof of the agreement and the use of "unlawful" means, all members of the "conspiracy"—whether or not they participated in the unlawful activity, condoned it or even knew about it—are jointly and severally liable for all injuries caused, even those that result from lawful activity engaged in by the "conspiracy." 15A C.J.S. *Conspiracy*, § 18, pp. 656-58. As this Court said in *Gibbs*:

> "Under the state law, it would not have been relevant that the union had not actually authorized, participated in or ratified the particular violence or even the general use of violence. It would only be necessary to show a conspiracy in which the union had a part, and to show also that those who engaged in the violence were members of the conspiracy and their

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[10] Mr. Justice Holmes, as a member of the Supreme Judicial Court of Massachusetts, expressed strong objections to this notion in his famous dissent in Vegelahn v. Guntner, 167 Mass. 92, 107-08, 44 N.E. 1077, 1081, 35 L.R.A. 722, 727, 57 Am. St. Rep. 443, 448 (1896), when he said:

> "But there is a notion, which latterly has been insisted on a good deal, that a combination of persons to do what any one of them lawfully might do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth may not be hidden under this proposition. But in the general form in which it has been presented and accepted by many courts, I think it plainly untrue, both on authority and principle."

acts were related to the conspiracy's purpose." 383 U.S. at 733.[11]

Thus, virtually any kind of group activity could be labelled as a common-law conspiracy if any member of the group commits an "unlawful" act in furtherance of the group's purpose. As Mr. Justice Jackson warned, in his concurring opinion in *Krulewitch* v. *United States*, 336 U.S. 440, 446 (1949), the law of criminal conspiracy represents "a serious threat to fairness in our administration of justice." He called the crime of conspiracy "so vague that it almost defies definition." He continued:

> "[E]ven when appropriately invoked, the looseness and pliability of the doctrine present inherent dangers which should be in the background of judicial thought wherever it is sought to extend the doctrine to meet the exigencies of a particular case." 336 U.S. at 449.[12]

Moreover, a conspiracy can be proved "by evidence that is admissible only upon assumption that conspiracy existed." 336 U.S. at 453.

When the conspiracy doctrine is applied to the law of restraint of trade, there are strong policy considerations which may overcome these due process obstacles. The operative principle for business is that competitors are supposed to compete, not collaborate, and to advance their individual profit-seeking objectives. The law appropri-

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[11] "By pleading conspiracy, the plaintiff implicates each defendant who merely participates in the common design. The act or declaration of one defendant in carrying out the wrong is the act or declaration of all, and thus persons who merely agree to the plan or design may be held liable for the acts of others even if they in fact commit no overt act, and gain no benefit therefrom." Note, *Civil Conspiracy and Interference With Contractual Relations*, 9 LOYOLA (La.) L. REV. 302, 310-11 (1975).

[12] "The modern crime of conspiracy is almost entirely the result of the manner in which conspiracy was treated by the court of Star Chamber," which flourished in England in the 17th Century. 8 HOLDSWORTH, HISTORY OF ENGLISH LAW 379 (2d ed. 1937).

ately intervenes when that important principle is not followed. Indeed, the existence of a conspiracy may more easily be proved under the antitrust laws than in other areas simply because business actions that are not consistent with the actors' objectives as competitors produce a strong inference of conspiratorial behavior. *See e.g.*, Turner, *The Definition of Agreement Under the Sherman Act*, 75 HARV. L.REV. 655, 658-59 (1962).

Application of the conspiracy doctrine to suppress a civil rights boycott, however, cannot proceed on any such principle.[13] There is no policy that favors competition in pursuit of civil rights; to the contrary, collaboration is not only permitted but is encouraged and protected—by the First Amendment. As we have shown, a civil rights boycott is a quintessential exercise of the right to associate and to speak on matters of public importance. Judging such activities as conspiracies at common law not only raises serious due process concerns but also results in (1) imposing tort liability on individuals solely because of their politcial associations and (2) injunctions that are overbroad, content-based, prior restraints on speech.

A. *Imposing Liability On An Individual Solely Because of Political Association With Others Violates the First Amendment.*

In a long line of cases concerning actions against those associated with political organizations, this Court has consistently held that mere association with the organization cannot be the basis of criminal sanction or other adverse action by the government, *even where, unlike here, the organization has unlawful aims.*

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[13] The court below acknowledged that civil rights activity may not be judged under restraint-of-trade principles, citing United Mine Workers v. Pennington, 381 U.S. 657 (1965), Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), Missouri v. National Org. for Women, 620 F.2d 1301 (8th Cir.), *cert. denied*, 449 U.S. 842 (1980), and Machesky v. Bizzell, 414 F.2d 283 (5th Cir. 1969). App. 22a, 393 So. 2d at 1301.

The principle was first clearly established in *Scales* v. *United States*, 367 U.S. 203 (1961), and *Noto* v. *United States*, 367 U.S. 290 (1961), involving criminal prosecutions for membership in the Communist Party under the Smith Act. Recognizing that the Communist Party had both legal and illegal aims, the Court in those cases held that proof of (1) the organization's illegal aims and (2) the individual's knowledge of and specific intent to further those aims, were necessary for conviction under the Act.[14] And whether the defendants had the requisite illegal intent

> "must be judged *strictissimi juris*, for otherwise there is a danger that one in sympathy with the legitimate aims of such an organization, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share." *Noto* v. *United States*, *supra*, 367 U.S. at 299-300.

The Court has adhered to this rigorous two-part test again and again in striking down statutes and rules because they unnecessarily infringed First and Fifth Amendment rights. *See, e.g., Aptheker* v. *Secretary of State*, 378 U.S. 500 (1964) (invalidating a regulation denying passports because of membership in a "subversive" organization as violating the Fifth Amendment right to travel and the First Amendment rights to speak and associate freely where there was no showing of specific intent to further unlawful aims of organization); *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966) (striking down a statutorily required oath binding state employees not to become members of the Communist Party, again where there was no showing of specific intent to further illegal action); *United States* v. *Robel*, 389 U.S. 258 (1967)

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[14] Because the Court in *Scales* construed the Smith Act as requiring these showings, it found that the Act passed muster under the First and Fifth Amendments. 367 U.S. at 224-30.

(holding unconstitutional a statute declaring it illegal for any member of a Communist organization to be employed at a defense facility). The same test has been applied to reverse conspiracy convictions based on the defendants' association with a group that urged burning of draft cards to protest the Vietnam war, *United States* v. *Spock*, 416 F.2d 165, 172-73 (1st Cir. 1969), and based on association with organizers of protest activities at the time of the 1968 Democratic convention in Chicago, *United States* v. *Dellinger*, 472 F.2d 340, 392-93 (7th Cir. 1972), *cert. denied*, 410 U.S. 970 (1973).

The Court has not limited the application of this strict two-part test to criminal cases. In *Keyishian* v. *Board of Regents*, 385 U.S. 589, 607-09 (1967), the Court declared unconstitutional a state law that disqualified from state employment any person who was a member of a group that advocated the unlawful overthrow of the government and that also required teachers, on pain of dismissal, to pledge that they would never become members of the Communist Party. More recently, in *Healy* v. *James*, 408 U.S. 169 (1972), the Court held that a state college's denial of recognition to a student political organization violated the students' First Amendment freedom of association. At issue, *inter alia*, was whether the assertedly violent and illegal goals of the national organization of Students for a Democratic Society could be imputed to the local chapter. The Court, noting that it "has consistently disapproved governmental action imposing criminal sanctions or denying rights and privileges solely because of a citizen's association with an unpopular organization," found that the State had failed to meet its "burden of establishing a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent [by the local chapter] to further those illegal aims." 408 U.S. at 185-86.

These cases all point to the conclusion that Government may not, through statutes, regulations, or court orders, penalize an individual for unlawful acts com-

mitted in furtherance of lawful political objectives merely because of the individual's association with those objectives.[15] A fundamental reason is that, where political association protected by the First Amendment is involved, any broader standard of liability can make persons wary of engaging in lawful political activity. *Keyishian* v. *Board of Regents*, *supra*, 385 U.S. at 604 ("[t]he danger of that chilling effect upon the exercise of First Amendment rights must be guarded against by sensitive tools"); *Elfbrandt* v. *Russell*, *supra*, 384 U.S. at 18 ("public employees of character and integrity [required to take oath] may well forgo their calling rather than risk prosecution for perjury or compromise their commitment to intellectual and political freedom"); *see also NAACP* v. *Alabama*, 357 U.S. 449, 463 (1958) (compelled disclosure of membership list "may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure"; *United States* v. *Spock*, *supra*, 416 F.2d at 188 (Coffin, J., dissenting in part); Note, *The Chilling Effect in Constitutional Law*, 69 COLUM. L. REV. 808 (1969).[16]

For this reason alone, the no-fault liability imposed upon participants in a civil rights boycott—which has only lawful aims—through application of the common law conspiracy doctrine cannot withstand constitutional scrutiny.

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[15] Although the injunction and damages award against petitioners in this case were entered in a private action, the First Amendment principles discussed in the text apply with full force. *See* New York Times v. Sullivan, 376 U.S. 254, 265 (1964).

[16] So important is the need to avoid chilling protected activity that a person whose own activity could lawfully be proscribed by a narrowly drawn statute may nevertheless challenge the constitutionality of a broadly drawn statute "on its face," *i.e.*, because the statute violates the First Amendment rights of others. *E.g.*, Thornhill v. Alabama, 310 U.S. 88 (1940).

B. *An Injunction That Prohibits Advocacy and Picketing Is An Impermissible Prior Restraint and An Unconstitutionally Overbroad, Content-Based Restriction on Speech.*

In addition to holding petitioners herein jointly and severally liable for all damages incurred by the merchants as a result of the boycott, the Mississippi Supreme Court upheld in every respect the lower court's injunction prohibiting all further boycott activity, peaceful or otherwise. As is typical in such cases, the injunction prohibited "the defendants and all persons confederating with them" from undertaking a wide array of boycott-related activities, including:

> "2. Persuading, soliciting, advising . . . any person to withdraw and withhold his or her patronage or to cease trading with the above-named complainants."
>
> and
>
> "6. Picketing or patrolling the premises of any of the above-named complainants . . . ." (App. 19g)

It is a long-established principle that any prior restraint on expression bears "a heavy presumption against its constitutional validity." *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 70 (1963). The Court has consistently applied this policy to prior judicial restraints. Thus, in *New York Times* v. *United States*, 403 U.S. 713 (1971) (per curiam), the Court held that the United States could not obtain injunctions against publication of the Pentagon Papers by the New York *Times* and the Washington *Post*. Similarly, in *Nebraska Press Association* v. *Stuart*, 427 U.S. 539 (1976), the Court lifted a "fair trial gag order" imposed by a state court judge, stating (per Chief Justice Burger):

> "The thread running through all these [cited] cases is that prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights." 427 U.S. at 559.

And in *Organization For A Better Austin* v. *Keefe*, 402 U.S. 415 (1971), the heavy presumption against prior restraints was invoked by this Court in vacating a state court injunction prohibiting picketing and distribution of leaflets.[17]

It necessarily follows that injunctions against civil rights boycotts, such as the injunction issued in this case, are presumed invalid. But there is no need to rely on presumptions, for injunctions like these contain two fundamental infirmities.

One is the unjustified restriction of speech based solely on the content of the message. The injunction *prohibits* all picketing of respondents' premises, and all "persuading, soliciting, advising" anyone to cease trading with respondents, although those activities had only a civil rights purpose.

It is clear that "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content . . . ." *Police Department* v. *Mosley*, 408 U.S. 92, 95 (1972).[18] *See also Consolidated Edison Co.* v. *Public Service Commission*, 447 U.S. 530, 537 (1980); *Carey* v. *Brown*, 447 U.S. 455, 461-62 (1980). An injunction or other government action may regulate the time, place or manner of the persuasion and advice to which it is addressed. 447 U.S. at 535-36. The injunction involved here, however, does not even pretend to be a regulation of time, place and manner. Instead,

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[17] Although the injunction at issue was termed "temporary" by the state court, it had already been in effect for over three years by the time of this Court's decision, and the Court made clear, in deciding that it had jurisdiction under 28 U.S.C. § 1257, that the lower court would likely issue a permanent injunction after a full trial through application of the same standards employed in issuing the injunction under review.

[18] In *Mosley*, the Court invalidated an ordinance that prohibited picketing in the vicinity of a school but allowed labor union picketing of a school that was involved in a labor dispute. It was therefore not content-neutral.

it forbids altogether the communication of a particular message. Moreover, the content of that message did not constitute a clear and present danger to the public order, a defamatory falsehood, or any of the other narrowly defined content categories which may permissibly be regulated.[19] Rather, as we have shown above, the message the civil rights boycotters sought to convey is essential political speech that lies at the core of the First Amendment.

The second fundamental infirmity in injunctions like these is their violation of the principle that, when statutes or other government action intrudes into the area of First Amendment freedoms, "[p]recision of regulation" is required to ensure that constitutionally protected liberties are not stifled. *NAACP* v. *Button*, 371 U.S. 415, 438 (1963). The Court stated in *Carroll* v. *President and Commissioners of Princess Anne*, 393 U.S. 175, 183-84 (1968):

> "An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order. In this sensitive field, the State may not employ 'means that broadly stifle fundamental personal liberties when the end, can be more narrowly achieved.' [Citation omitted] In other words, the order must be tailored as precisely as possible to the exact needs of the case."

An injunction based upon the common-law conspiracy doctrine, like the one issued in this case, is bound to regulate the content of protected speech in an overbroad manner, for that doctrine sweeps within it all persons who have actively supported the lawful aims of the "con-

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[19] *See e.g.*, Brandenburg v. Ohio, 395 U.S. 444 (1969) (advocacy directed to and likely to invite or produce imminent lawless action); Gertz v. Welsh, 418 U.S. 323 (1974) (defamation); Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (fighting words).

spiracy" and makes the entire "conspiracy" subject to judicial prohibition.

On facts remarkably similar to those of this case, the Fifth Circuit in *Machesky* v. *Bizzell*, 414 F.2d 283 (5th Cir. 1969), struck down a Mississippi state court injunction prohibiting peaceful picketing and other boycott activity directed against white merchants in a small Mississippi town by blacks protesting racial discrimination. The boycott at issue had been accompanied by sporadic violence, including threats against customers patronizing the white merchants' stores. In addition to enjoining force or violence, the state court enjoined peaceful picketing and loitering or congregating to induce, persuade or coerce persons not to do business with the complaining merchants. Noting that the injunction at issue prohibited not only "protected picketing" but "even speech directed toward the boycott effort," the Fifth Circuit stated:

> "We hold that the state court injunction here is constitutionally overbroad in that it lumps the protected with the unprotected in such a way as to abridge important public interests in the full dissemination of public expression on public issues." 414 F.2d at 291.

It follows that a broad injunction against a civil rights boycott cannot be sustained, for it contravenes fundamental constitutional principles rooted firmly in the First Amendment.

C. *The* Meadowmoor *Case No Longer Expresses a Constitutionally Viable Principle.*

The Mississippi Supreme Court purports to rely upon *Milk Wagon Drivers Local 753* v. *Meadowmoor Dairies, Inc.*, 312 U.S. 287 (1941), in imposing sweeping liability upon a large group of defendants who had no personal involvement in any illegal activity. In *Meadowmoor*, the Court held that a labor union *and each of its six thousand members* were properly named defendants in an action alleging common law conspiracy, and, because a number of the defendants had engaged in vio-

lence, all of them could be subjected to a sweeping injunction not only against violence but also against peaceful picketing.

There are two problems with relying on *Meadowmoor* to support the decision below.

First, it was decided before the Court had developed the First Amendment principles on which we and the petitioners rely. The Court's holding is, as we urge here, inconsistent with fundamental constitutional principles.[20]

Second, the decision has had unfortunate consequences because of its vagueness: It authorizes an injunction barring peaceful picketing and other protected forms of expression if there has in some ill-defined sense been "enough" violence that can be linked to the protected activity. Although a number of state courts have distinguished *Meadowmoor* on its facts and rightly permitted the exercise of free expression to continue,[21] other state courts, citing *Meadowmoor*, have relied upon minimal evidence of unlawful conduct as a basis for enjoining the peaceful exercise of constitutional rights, and they have done so under an ill-defined conspiracy theory[22]

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[20] *Meadowmoor* has been cited in over 250 reported federal and state decisions, but until this case none of these decisions (except those later reversed) had ever enjoined peaceful boycotts, demonstrations or picketing because of related violence except in the context of labor union activity.

[21] *See, e.g.*, Mason and Dixon Lines, Inc. v. Odom, 193 Ga. 471, 18 S.E.2d 841 (1942) (violence not sufficient to make future peaceful picketing coercive); Yellow Cab Co. v. Production Workers Union, 92 Ill. App. 3d 355, 416 N.E.2d 48 (1980) (violence not shown to be enmeshed with picketing); Missouri Cafeteria, Inc. v. McVey, 362 Mo. 583, 242 S.W.2d 549 (1951) (violence not sufficient to justify injunction against picketing); Waldbaum, Inc. v. United Farm Workers, 383 N.Y.S.2d 957 (Sup. Ct. 1976) (violence does not meet *Meadowmoor* standard).

[22] *See, e.g.*, Local 858, Hotel Restaurant Employees International Alliance v. Jiannas, 211 Ark. 352, 200 S.W.2d 763 (1947); Steiner v. Long Beach Local 128, Oil Workers Int'l Union, 19 Cal. 2d 676, 123 P.2d 20 (1942); Moore v. City Dry Cleaners & Laundry, Inc., 41 So. 2d 865 (Fla. 1949).

or without clearly articulating any liability theory at all.[23] By contrast, no reported Federal decision since *Meadowmoor* has ever invoked that decision's seeming support for injunctions against the peaceful exercise of constitutional rights because of related violence, and the federal judiciary has repeatedly overturned or limited state court injunctions against peaceful picketing, boycotts, or demonstrations.[24]

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[23] Smith v. F & C Engineering Co., 225 Ark. 688, 285 S.W.2d 100 (1956); Enterprise Window Cleaning Co. v. Slowuta, 299 N.Y. 286, 86 N.E.2d 750 (1949) (court refused to modify injunction against picketing entered by consent although there had been no violence for 10 years); Hearn Department Stores, Inc. v. Livingston, 282 A.D. 480, 125 N.Y.S.2d 187 (1953); Meltex, Inc. v. Livingston, 145 N.Y.S.2d 858 (Sup. Ct. 1955); United Farm Workers Organizing Comm. v. La Casita Farms, Inc., 439 S.W.2d 398 (Tex. Civ. App. 1968, writ ref'd n.r.e.); International Ass'n of Carpenters of America, Local 213 v. Sharp, 202 S.W.2d 506 (Tex. Civ. App. 1947).

[24] Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175 (1968) (state court injunction against rallies issued in reliance upon *Meadowmoor* reversed); Teamsters Local 795 v. Newell, 356 U.S. 341 (1958) (state court injunction against picketing and boycotts issued in reliance upon *Meadowmoor* reversed *per curiam*); Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957) (state court injunction against picketing reversed; *Meadowmoor* distinguished); Cafeteria Employees Union Local 302 v. Angelos, 320 U.S. 293 (1943) (state court injunction against picketing reversed; *Meadowmoor* distinguished); AFL v. Swing, 312 U.S. 321 (1941) (state court injunction against picketing reversed; *Meadowmoor* distinguished); Henry v. First Nat'l Bank, 595 F.2d 291 (5th Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980) (enforcement of state court injunction against all picketing and boycotting enjoined; *Meadowmoor* distinguished); Machesky v. Bizzell, 414 F.2d 283 (5th Cir. 1969) (enforcement of state court injunction against civil rights boycott enjoined; *Meadowmoor* distinguished); Acme Markets, Inc. v. Retail Store Employees Union Local 692, 231 F. Supp. 566 (D. Md. 1964) (enforcement of state court temporary restraining order against all picketing limited to acts enjoined in *Youngdahl*); *see also*

Meadowmoor no longer reflects current interpretation of the protection to be afforded First Amendment rights, and we urge that it be overruled.

III. Illegal Conduct By Boycott Participants Can Be Controlled Under Traditional Common-Law Principles of Personal Responsibility Without Employing The Conspiracy Doctrine.

We have shown that even if some members of a group engage in violence, so long as violence is not a planned objective or tactic, a civil rights boycott is the kind of activity that is not merely lawful but is—indeed is the essence of—the freedom of association and speech which the First Amendment protects. We have also shown that application of the common-law conspiracy doctrine to civil rights boycotts raises serious due process objections. Therefore, the boycott itself cannot be made unlawful.

There remains an important question: How may a court, without treading on constitutional rights, control and provide redress for violence or similar illegal conduct when it occurs in connection with a civil rights boycott?

The answer lies in traditional common-law principles that govern responsibility of one person for torts that are committed by another.

Section 876 of the Restatement of Torts (Second) describes the situations in which one person is subject to

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Potter v. Houston Gulf Coast Building Trades Council, 482 F.2d 837 (5th Cir. 1973); Collin v. Chicago Park District, 460 F.2d 746 (7th Cir. 1972) (governmental body ordered to grant permit for demonstration; *Meadowmoor* distinguished); Smith v. Grady, 411 F.2d 181 (5th Cir. 1969) (federal district court injunction against verbal communications during civil rights boycott modified); Rosen v. North Carolina, 345 F. Supp. 1364 (W.D.N.C. 1972); Hall v. Hawaiian Pineapple Co., 72 F. Supp. 533 (D. Hawaii 1947); United Electrical Workers of America v. Baldwin, 67 F. Supp. 235 (D. Conn. 1946) (state court injunction against picketing unconstitutionally overbroad).

liability for harm caused by another person with whom the first person is "acting in concert." [25] In none of these situations is a person subject to liability if his only relationship to the tort is that he joined in a common plan to carry out a lawful objective but another member engaged in tortious conduct in furtherance of the plan.[26]

One situation is when the first person "does a tortious act in concert with the other or pursuant to a common

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[25] "876. Persons Acting in Concert

For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he

(a) does a tortious act in concert with the other or pursuant to a common design with him, or

(b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or

(c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person."

[26] *Cf.* Rizzo v. Goode, 423 U.S. 362, 373-76 (1976), where the Court reversed an injunction under 42 U.S.C. § 1983 against police officials that would have required them to restrain tortious police conduct, on the ground that such collective civil responsibility should be limited to concerted designs to accomplish a wrongful objective. The Court distinguished the injunction in Hague v. CIO, 307 U.S. 496 (1939), as grounded on "the adoption and enforcement of deliberate policies" by the Mayor and city officials to forbid communication regarding federal labor statutes, and distinguished the injunction in Allee v. Medrano, 416 U.S. 802 (1974), on the ground that the injunction in that case against the named Texas Rangers "flowed from an intentional, concerted, and indeed conspirational effort to deprive the organizers of their First Amendment rights . . . ." 423 U.S. at 374-75. *Cf.* Monell v. New York City Department of Social Services, 436 U.S. 658, 692 (1978) (municipality not liable under Section 1983 for the torts of its employees).

design with him . . . ." Sec. 876(a). When the word "conspiracy" is used in this context, it means a common plan to engage in tortious conduct or to achieve an unlawful objective. Comment *b*. Under this concept, labelling as a "conspiracy" a common plan to achieve a lawful objective would not support the imposition of liability on all members; one alleged "co-conspirator" could thus be liable for tortious acts committed in furtherance of the common plan while none other would be. *E.g.*, *James* v. *Evans*, 149 F. 136 (3d Cir. 1906), cited for this proposition in W. PROSSER, TORTS 293 n.20 (4th ed. 1971)[27]; *Hickman* v. *Taylor*, 170 F.2d 327 (3d Cir. 1948), *cert. denied*, 336 U.S. 906 (1949).

Another situation involving liability for the acts of another occurs when one person gives the other "substantial assistance or encouragement" to engage in tortious conduct *and* knows that the conduct constitutes a breach of duty. Sec. 876(b). Once again, there must be a close relationship between the tortious conduct and the person held liable albeit not the actor. *See, e.g.*, *Haddock* v. *Stewart*, 232 Md. 139, 192 A.2d 105 (1963) (where two automobiles are racing on the streets and one is involved in an accident, the other driver may be held liable)[28]; *South Shore National Bank* v. *Donner*, 104 N.J. Super. 169, 249 A.2d 25 (1969) (allegation that jeweler furnished a false appraisal with knowledge that it would be used to defraud insurer states a cause of action under Section 876(b) of the Restatement). Again there is no

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[27] The court in *James* said:

> "This is in substance an action on the case in the nature of conspiracy. Being a civil remedy the gist of the action is not the conspiracy charged, but the tort working damage to plaintiff. The tort in its nature was capable of commission either by both defendants jointly or by Freeman alone." 149 F. at 140.

[28] This fact pattern appears as illustration 2 in the ALI's comment on Section 876(a).

liability on the part of one who has neither acted tortiously nor agreed to achieve an unlawful objective.[29]

Finally, the first person is subject to liability if he gives the other "substantial assistance" in accomplishing the tortious result *and* has himself been guilty of an independent breach of duty to the injured party. Sec. 876(c). Thus, if the person sought to be held liable merely joins in an effort to achieve a lawful objective, that person has committed no breach of duty to a person injured by tortious conduct of another member of the group even if the first person has rendered "substantial asistance" to the actor. Liability cannot be imposed.

In short, there is ample authority, expressed in Section 876, for imposing tort liability on those who truly ought to be liable without impairing the First Amendment rights of those whose relationship is more distant. There is no demonstrated need for the broad-scale liability without fault that is imposed under the conspiracy doctrine followed by the Mississippi Supreme Court in this case. Reliance on Section 876 concepts is clearly a "less drastic means" for dealing with the subject of legitimate concern—preventing violence. *Cf. Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960).

We urge the Court, therefore, to hold that a civil rights boycott may not be the subject of a suit for damages or injunctive relief under the conspiracy doctrine or any similar theory.[30]

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[29] There may well be situations in which mere "encouragement" to commit a tort would not suffice for the imposition of liability, and certainly criminal liability should be imposed only when there is a clear and present danger that violence or other unlawful conduct will occur. *E.g.*, Yates v. United States, 354 U.S. 298 (1957).

[30] The Court is free to delimit the power of the states to apply common law causes of action to conduct protected by the First Amendment. The Court took just such a step in New York Times v. Sullivan, 376 U.S. 254 (1964), where it forbade libel actions by public officials absent proof of actual malice.

IV. Limiting the Power of A State To Suppress Civil Rights Boycotts Is Not Inconsistent With the Principle That Federal Civil Rights Laws and Remedies Should Be Broadly Construed.

We have here urged that the Court limit the power of states to suppress civil rights boycotts. It may be thought that there is an inconsistency between this position and the decision under review in *General Building Contractors Association* v. *Pennsylvania*, No. 81-280, and related cases.[31] In that case the lower court found that a union hiring hall was operated in a racially discriminatory fashion. Employees had been referred to the defendant employers exclusively through the discriminatory hiring hall pursuant to a series of collective bargaining agreements negotiated by several trade groups as agents of the employers. The court found that the employers and the trade groups did not participate in the hiring hall operation and neither knew nor had reason to know of the discriminatory conduct. The court's decree, designed to eliminate the discrimination and ameliorate its present effects, imposes certain obligations not only on the union but also on the employers and trade groups. (No back pay liability has been assessed in the case.) The trade groups contend that no obligations should have been imposed upon them by the court's decree.

The decision in *General Building Contractors* rests on the proposition that federal civil rights laws should be construed broadly to accomplish their purposes and that remedies thereunder should be broadly applied. There is no inconsistency between the position advanced in this case and the rationale of *General Building Contractors*. The reason is apparent: Suppression of civil rights boy-

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[31] *General Bldg. Contractors* and this case have been set down for oral argument in tandem. 50 U.S.L.W. 3375 (Nov. 10, 1981).

cotts by sweeping injunctions and damages awards is contrary to several extremely important constitutional principles; broad construction of civil rights laws and remedies is not, and indeed it furthers the nation's historical commitment to end invidious discrimination.

Federal laws protecting constitutional rights, especially the Civil Rights Acts that were enacted following the Civil War, have consistently been accorded a broad interpretation. *See, e.g., Gomez* v. *Toledo*, 446 U.S. 635, 639 (1980): "as remedial legislation" a Civil Rights Act "is to be construed generously to further its primary purpose." This broad interpretation of the Civil Rights Acts also extends to the scope of relief that must be granted to those whose civil rights have been infringed. *See, e.g., Louisiana* v. *United States*, 380 U.S. 145, 154 (1965): "the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future."

Altogether different presumptions apply in a case like this one, involving laws and decrees affect First Amendment rights. There is a preumption against prior restraints upon expression, *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 70 (1963). "Broad prophylactic rules . . . are suspect" and "[p]recision of regulation" is required, *NAACP* v. *Button*, 371 U.S. 415, 438 (1963). An order "must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order." *Carroll* v. *President* and *Commissioners* of *Princess Anne*, 393 U.S. 175, 183 (1968).

Thus, while the Court has held that "[w]here a government restricts the speech of a private person, the state action may be sustained only if the government can show that the regulation is a precisely drawn means

of serving a compelling state interest," *Consolidated Edison Co.* v. *Public Service Commission*, 447 U.S. 530, 540 (1980), the Court has also reasoned that "[a] narrow construction of the language of § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded by § 1 of the Civil Rights Act of 1866, . . . from which § 1982 was derived."[32] *Sullivan* v. *Little Hunting Park*, 396 U.S. 229, 237 (1969).

Petitioners in *General Building Contractors* appear to make no claim that their conduct was protected by the First Amendment or that the injunction of which they complain infringed First Amendment rights. Instead, their contention is one of statutory construction. They argue that the lower court's construction of 42 U.S.C. § 1981 was too broad. But many statutes are construed broadly, while many others are construed narrowly; there is no "inconsistency" between these two situations, for every rule of law must be construed in light of the principles pertinent to that rule. The principle for which we contend here is not pertinent to the question presented in *General Building Contractors*.

In short, *Claiborne Hardware* and *General Building Contractors* must be resolved under contrasting lines of precedents: the former, under a series of decisions narrowly circumscribing governmental inhibitions upon constitutionally protected activity; the latter, under the decisions requiring a broad interpretation of civil rights statutes and imposition of broad remedial action to counter invidious discrimination.

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[32] The Civil Rights Act of 1866 was also the source of 42 U.S.C. § 1981, the precise statute involved in *General Bldg. Contractors*.

CONCLUSION

For the reasons set forth above, the decision of the Supreme Court of Mississippi should be reversed.

Respectfully submitted,

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